

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 45227

SOUTHERN RAILWAY COMPANY, Plaintiff,

v.

THE UNITED STATES OF AMERICA, Defendant**I. PETITION—Filed July 18, 1940***To the Honorable the Court of Claims:*

Plaintiff, Southern Railway Company, respectfully represents:

For a First Cause of Action**I**

Plaintiff, at all times hereinafter mentioned, was and is a domestic corporation organized and existing under the laws of the State of Virginia, engaged in the business of common carrier of passengers and freight by railroad, with its principal office in the City of Richmond, County of Henrico, State of Virginia.

[fol. 2]

II

Plaintiff, in the conduct of its business as a common carrier of passengers and freight, has transported property of defendant for its account and benefit and upon its request and for which defendant is indebted to plaintiff, all as shown hereinafter.

III

None of plaintiff's lines of railway were built with the aid of lands granted by the Congress of the United States, except that portion thereof lying between Jacksonville, Alabama, and Selma, Alabama, a distance of one hundred and forty-five (145) miles; and hence, except upon shipments of property of defendant moving for its account over plaintiff's lines of railway between the points named, plaintiff, prior to the inception of Freight Land-Grant Equalization Agreements, hereinafter more specifically referred to, collected the full amount of its duly filed, published and

established charges, and refused to allow defendant a deduction of fifty per centum (50%) from its regularly established charges as was done where its property moved over plaintiff's land-grant mileage aforesaid. As a result, defendant did not route its shipments via plaintiff's lines of railway except to extent absolutely necessary where there were available to defendant other reasonable and practical routes via lines of railway with greater land-grant mileage. This failure of defendant to route its shipments via the more direct route over plaintiff's lines resulted in loss of traffic to plaintiff, and delay, inconvenience, and expense to defendant in shipping by longer and less direct routes.

[fol. 3]

IV

In the situation set out in paragraph III above, plaintiff and defendant, for their mutual benefit, had in effect for many years prior to November 29, 1933, certain agreements known as Freight Land-Grant Equalization Agreements, whereby plaintiff agreed with defendant to transport its property moving for its account via plaintiff's non-land-grant mileage at a rate equal to the rate applying via the favored land-grant road. In order to continue this arrangement in force, plaintiff (and certain other common carriers by railroad comprising the group of carriers included in the trade name "Southern Railway System"), on November 29, 1933, entered into an agreement with defendant through the Quartermaster General, United States War Department, entitled Freight Land-Grant Equalization Agreement, a copy of which marked Exhibit No. 1, is attached hereto and made a part hereof. Said agreement provided in part that plaintiff (and the other carriers named) agreed:

"subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commission applying from point of original to destination at time of movement."

This agreement by its terms became effective December 1st, 1933, and remained in full force and effect at all times thereafter until May 1, 1938, on which date it was canceled [fol. 4] and superseded by another agreement between plaintiff (and certain other of the common carriers by railroad comprising the group of carriers included in the trade name "Southern Railway System") and defendant, entitled Freight Land-Grant Equalization Agreement dated April 1, 1938. This last named agreement, a copy of which, marked Exhibit No. 2, is attached hereto and made a part hereof, so far as pertinent here is identical in terms and provisions with the first named agreement marked Exhibit No. 1.

V

In the absence of the agreements referred to in paragraph IV above, plaintiff would be entitled to collect the full lawful tariff rate on file with the Interstate Commerce Commission on shipments of defendant's property moving for its account over plaintiff's non-land-grant mileage and that of its connections applying via the route of actual movement; but, under and by virtue of the agreements aforesaid, plaintiff (and the other carriers parties thereto and their connections, which had substantially similar agreements with the defendant) agreed, subject to named conditions and exceptions (none of which are pertinent here) to accept, and defendant agreed to pay, for the transportation of the property of defendant shipped for its account over plaintiff's non-land-grant mileage and that of its connections the lowest net rate lawfully available to defendant, which net rate was to be computed by deducting allowances account of land-grant mileage from the lawful tariff rate on file with the Interstate Commerce Commission applying via a reasonably available and practical route over which the shipments would normally move in the absence of the agreements aforesaid.

[fol. 5]

VI

While said agreements referred to in paragraph IV above were in full force and effect from July 13, 1934, to September 15, 1934, both inclusive, the Federal Surplus Relief Corporation, a non-stock, non-profit corporation organized and existing under the laws of the State of Delaware and created, as an agency of defendant, the United States of America,

under authority granted the President by the provisions of paragraph (b) of section 2, and subsection (a) of section 201 of the National Industrial Recovery Act, approved June 16, 1933, and recognized and continued as an agency of the United States by various subsequent Congressional enactments, such as section 6 of Public No. 142, 73d Congress, approved April 7, 1934, 48 Stat. 528; Public No. 440, 74th Congress, approved February 11, 1936, 49 Stat. 1109, 1118; Public No. 739, 74th Congress, approved June 22, 1936, 49 Stat. 1597, 1648; Public No. 165, 75th Congress, approved June 28, 1937, 50 Stat. 323; and Public No. 430, 75th Congress, approved February 16, 1938, 52 Stat. 31 (the name of the corporation having been changed to "Federal Surplus Commodities Corporation" on November 18, 1935) shipped as consignor and duly authorized agent of defendant and for defendant's account over lines of plaintiff and its connections 147 shipments of livestock, the property of defendant, from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin and Nebraska, to points in North Carolina, South Carolina, Georgia, Tennessee and Virginia. Plaintiff transported and delivered each of said shipments in accordance with Uniform Live Stock Contract covering, but has not been paid the full amount of its lawful charges, as is fully shown hereinafter.

[fol. 6]

VII

The said Corporation, in making the shipments aforesaid, acted in pursuance of circular issued by Harry L. Hopkins, Administrator, Federal Emergency Relief Administration, dated June 27, 1934, setting out the functions of the said Corporation in the receipt, shipment and disposition of the livestock involved in the shipments aforesaid. A copy of said circular, marked Exhibit No. 3, is hereto attached and made a part hereof.

VIII

The number of plaintiff's bill which was presented to said Corporation on each shipment, on defendant's standard Form No. 1068 entitled "Public Voucher for Transportation of Freight or Express," which bill showed, among other things, as to each shipment the class, weight, gross and net rates, together with computation showing the total amount claimed; the date of each uniform livestock contract; defendant's number of such contract; the origin of

each shipment; the destination thereof; the charges assessed; the charges paid; and the balance due, are shown on Exhibit No. 4, hereto attached and made a part hereof.

IX

Each of said shipments moved on a Uniform Live Stock Contract, wherein said Corporation was consignor; and, upon arrival at destination, there was attached thereto a rider reading in part:

"Property of the Federal Government

Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in the [fol. 7] same manner as if under a Government Bill of Lading.

Instructions for Billing:

1. Consignee should pay no charges on this shipment. 2. Charges to be billed to the Dept. or Estab. and Bu. or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper."

Each of the Uniform Live Stock Contracts, with the rider aforesaid attached, covering the shipments set forth in said Exhibit No. 4, is in the possession of the General Accounting Office, but there is attached hereto and made a part hereof a sample copy of the Uniform Live Stock Contract prescribed by the Interstate Commerce Commission and adopted by carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1922, as amended August 1, 1930, marked Exhibit No. 5, which contract is identical in terms and provisions with the Uniform Live Stock Contracts on which the shipments here involved moved. There is also attached hereto and made a part hereof a sample copy of the rider above referred to, marked Exhibit No. 6.

X

In pursuance of instructions contained in the rider set forth in paragraph IX above, plaintiff presented to the said Corporation, an agency of defendant as aforesaid, the Uniform Live Stock Contract covering each of said shipments,

together with the freight voucher on authorized Government form. In due course, on each of said shipments said Corporation on behalf of defendant paid plaintiff a portion [fol. 8] of the lawfully assessed charges less deductions on account of suspensions by the General Accounting Office, if any; the amount of said payments in each case being based by defendant upon the computation of a rate via a grossly unreasonable and impractical route via which plaintiff had not agreed to equalize the rate. The route via which plaintiff computed the charges in each case was a reasonable and practical route and the one via which plaintiff had agreed by virtue of the Freight Land-Grant Equalization Agreements hereinbefore referred to and made a part hereof, to equalize the rate. The difference between the charges paid as aforesaid and the charges assessed as aforesaid, all as shown in each case on said Exhibit No. 4, constitute the undercharges here sued for; and defendant has refused to pay any sum in excess of that shown in Exhibit No. 4 as having been paid.

XI.

Item No. 115 of said Exhibit No. 4 was the subject of a petition filed with the General Accounting Office on May 22, 1939, by plaintiff, wherein it was prayed that its disallowance of plaintiff's supplemental bill covering disallowances on original bill by said Corporation be reconsidered. On June 17, 1940, the Comptroller General handed down his decision denying the prayer of the petition.

Item No. 115 aforesaid is typical of the remaining items listed in said Exhibit No. 4, and the purpose of the petition herein referred to was to secure an authoritative ruling from the Comptroller General which could be used by plaintiff as a basis for determining such further action as might to it seem advisable.

[fol. 9]

XII

No action, except as stated, has been taken by the Congress or by any department of the Government of the United States, and plaintiff is justly entitled to the amount claimed from defendant after allowing all just credits and set-offs.

Plaintiff was the last or delivering carrier of each of the shipments shown on said Exhibit No. 4, and as such is the sole owner of the claim set forth in this petition, although if plaintiff recovers herein it will as to certain

of the items, in accordance with its arrangements with its connections and established bases of interline settlements, pay them a sum equal to their proportion of the under-charges recovered; plaintiff has made no assignment or transfer of the claims set forth in this petition, or any part thereof or any interest therein; plaintiff has at all times through its officers and agents borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Plaintiff believes the facts stated in this petition to be true.

XIII

Wherefore plaintiff is entitled to recover the under-charges aforesaid in the sum of \$9,896.90.

For a Second Cause of Action

XIV

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to V hereof, both inclusive, with the same force and effect as if they were here again set forth in full.

[fol. 10]

XV

While the agreements referred to in paragraph IV above were in full force and effect and from July 24, 1934, to February 17, 1938, both inclusive, various consignors, upon the authority of defendant and at its direction and for its account, shipped over plaintiff's lines of railway and those of its connections two hundred and twenty-seven (227) shipments of property of defendant, destined to various points on plaintiff's lines of railway and consigned to various consignees. Plaintiff transported and delivered each of said shipments in accordance with the bill of lading contract covering, but has not been paid the full amount of its lawful charges, as is fully shown hereinafter.

XVI

Each of said shipments moved on a standard Government Bill of Lading which named the Tennessee Valley Authority, an agency of defendant created by Act of Con-

gress (Public No. 17, 73d Congress, approved May 18, 1933, 48 Stat. 58) on the face thereof as the Department or Establishment and Bureau or Service to which the charges were to be billed, and each such bill of lading is in the possession of the General Accounting Office. A copy of the standard Government Bill of Lading marked Exhibit No. 7, is attached hereto and made a part hereof, which is identical in terms and provisions with the standard Government Bills of Lading on which the shipments here involved moved.

XVII

The number of plaintiff's bill which was presented to said Corporation on each shipment, on defendant's stand-[fol. 11] ard Form No. 1068 entitled "Public Voucher for Transportation of Freight or Express," which bill showed, among other things, as to each shipment the class, weight, gross and net rates, together with computation showing the total amount claimed; the date of each bill of lading; defendant's number of each such bill; the origin of each shipment; the destination thereof; the charges assessed; the charges paid; and the balance due, are shown on Exhibit No. 8, hereto attached and made a part hereof.

XVIII

In and by said standard Government Bills of Lading, defendant agreed as to each of said shipments in part as follows:

"GENERAL CONDITIONS AND INSTRUCTIONS

Conditions

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated."

Said Bills of Lading further provided:

"Instructions for Billing: 1. Consignee should pay [fol. 12] no charges on this shipment. 2. Charges to be billed to the Department or Establishment and Bureau or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper."

XIX

In pursuance of the agreement between plaintiff and defendant, as evidenced by the excerpt from the standard Government Bill of Lading set out in paragraph XVIII above, plaintiff presented to the Tennessee Valley Authority, an agency of defendant as aforesaid, and named on the face of each bill of lading covering the shipments aforesaid, each of the bills of lading, together with its freight voucher, prepared on authorized Government form. In due course, on each of said shipments on which charges were billed as aforesaid, Tennessee Valley Authority, for and on behalf of defendant, or defendant by direct settlement through the General Accounting Office, paid plaintiff a portion of the lawfully assessed charges on each of said shipments, the amount of said payments in each case being based by defendant upon the computation of a rate via a grossly unreasonable and impractical route via which plaintiff had not agreed to equalize the rate. The route via which plaintiff computed the charges in each case was a reasonable and practical route and the one via which plaintiff had agreed by virtue of the Freight Land-Grant Equalization agreements hereinbefore referred to and made a part hereof, to equalize the rate. The differences between the charges paid as aforesaid and the charges assessed as aforesaid, all as shown in each case on said Exhibit No. 8, constitute the undercharges here sued for; and defendant has refused to [fol. 13] pay any sum in excess of that shown on said Exhibit No. 7 as having been paid.

XX

Items 39, 67, 68, 69, 70, 71, 72, 73, 74 and 169 of said Exhibit No. 8 were the subject of a petition filed by plaintiff on January 26, 1937, with the General Accounting Office, wherein it was prayed that its disallowances of

plaintiff's supplemental bill covering disallowances on original bill by Tennessee Valley Authority be reconsidered. On June 1, 1939, the Comptroller General handed down his decision denying the prayer of the petition.

Items Nos. 39, 67, 68, 69, 70, 71, 72, 73, 74 and 169 aforesaid are typical of the remaining items listed in said Exhibit No. 8, and the purpose of the petition herein referred to was to secure an authoritative ruling from the Comptroller General which could be used by plaintiff as a basis for determining such further action as might to it seem advisable.

XXI

No action, except as stated, has been taken by the Congress or by any department of the Government of the United States, and plaintiff is justly entitled to the amount claimed from defendant after allowing all just credits and set-offs.

Plaintiff was the last or delivering carrier of each of the shipments shown on said Exhibit No. 8, and as such is the sole owner of the claim set forth in this petition, although if plaintiff recovers herein it will as to certain of the items, in accordance with its arrangements with its [fol. 14] connections and established bases of interline settlements, pay them a sum equal to their proportion of the undercharges recovered; plaintiff has made no assignment or transfer of the claim set forth in this petition, or any part thereof or any interest therein; plaintiff has at all times through its officers and agents borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Plaintiff believes the facts stated in this petition to be true.

XXII

Wherefore plaintiff is entitled to recover the undercharges aforesaid in the sum of \$1,517.21.

For a Third Cause of Action

XXIII

Plaintiff repeats and realleges each and every allegation contained in paragraphs I to V hereof, both inclusive, with

the same force and effect as if they were here again set forth in full.

XXIV

While the agreements referred to in paragraph IV above were in full force and effect, and from December 29, 1934, to October 27, 1938, both inclusive, defendant through certain of its executive and administrative departments and divers persons acting for and in its behalf, and at its direction and for its account, shipped over plaintiff's lines of railway and those of its connections thirty-five (35) [fol. 15] shipments of property of defendant destined to various points on plaintiff's lines of railway, consigned to certain of defendant's executive or administrative departments, or to various persons acting on its behalf and at its direction. Plaintiff transported and delivered each of said shipments in accordance with the bill of lading contract covering, but has not been paid the full amount of its lawful charges, as is fully shown hereinafter.

XXV

Each of said shipments moved on standard Government Bill of Lading, and each such bill of lading is in the possession of the General Accounting Office. A copy of said standard Government Bill of Lading, marked Exhibit No. 7, has been attached hereto and made a part hereof, as is alleged in paragraph XVI above, which said copy is identical in terms and provisions with the standard Government Bills of Lading on which the shipments here involved moved.

XXVI

The number of plaintiff's bill which was presented to said Corporation on each shipment, on defendant's standard Form No. 1068 entitled "Public Voucher for Transportation of Freight or Express," which bill showed, among other things, as to each shipment the class, weight, gross and net rates, together with computation showing the total amount claimed; the date of each bill of lading; defendant's number of each such bill; the charges assessed; the charges paid; and the balance due, are shown on Exhibit No. 9 hereto attached and made a part hereof.

In and by said standard Government Bills of Lading, defendant agreed as to each of said shipments in part as follows:

"GENERAL CONDITIONS AND INSTRUCTIONS

Conditions

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated."

Said Bill of Lading further provided:

"Instructions for Billing: 1. Consignee should pay no charges on this shipment. 2. Charges to be billed to the Department or Establishment and Bureau or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper."

XXVIII

In pursuance of the agreement between plaintiff and defendant as evidenced by excerpt from standard Government Bill of Lading set out in paragraph XXVII above, plaintiff in each case presented to the Department or Es-[fol. 17] tablishment and Bureau or Service named on the face of each bill of lading covering the shipments aforesaid, each of the bills of lading, together with its freight voucher prepared on authorized Government form. In due course on each of said shipments on which charges were billed as aforesaid, defendant paid plaintiff a portion of the lawfully assessed charges less deductions on account of suspensions by the General Accounting Office, if any, on each of said shipments, the amount of said payments in each case being based by defendant upon the computation of a rate via

a grossly unreasonable and impractical route, via which plaintiff had not agreed to equalize the rate. The route via which plaintiff computed the charges in each case was a reasonable and practical route and the one via which plaintiff had agreed by virtue of the Freight Land-Grant Equalization agreements hereinbefore referred to and made a part hereof, to equalize the rate. The differences between the charges paid as aforesaid and the charges assessed as aforesaid, all as shown in each case on said Exhibit No. 9, constitute the undercharges here sued for; and defendant has refused to pay any sum in excess of that shown on Exhibit No. 9 as having been paid.

XXIV

No action, except as stated, has been taken by the Congress or by any department of the Government of the United States, and plaintiff is justly entitled to the amount claimed from defendant after allowing all just credits and set-offs.

Plaintiff was the last or delivering carrier of each of the shipments shown on said Exhibit No. 9, and as such [fol. 18] is the sole owner of the claim set forth in this petition, although if plaintiff recovers herein it will as to certain of the items, in accordance with its arrangements with its connections and established bases of interline settlements, pay them a sum equal to their proportion of the undercharges recovered; plaintiff has made no assignment or transfer of the claim set forth in this petition, or any part thereof or any interest therein; plaintiff has at all times through its officers and agents borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Plaintiff believes the facts stated in this petition to be true.

XXX

Wherefore plaintiff is entitled to recover the undercharges aforesaid in the sum of \$413.17.

XXXI

By virtue of the allegations contained in the first, second and third causes of action herein, plaintiff prays judgment against the United States in the aggregate amount of

\$11,827.28, with interest, together with the costs and disbursements of this action, and for such other relief as to the court may seem just.

Hamilton & Hamilton, Union Trust Building, Washington, D. C., Attorneys for plaintiff.

[fol. 19] *Duly sworn to by W. H. Luckett. Jurat omitted in printing.*

[fol. 20] EXHIBIT No. 1 TO PETITION

Southern Railway System

Office of Vice President

In Charge of Traffic

Washington, D. C.

E. R. Oliver
Vice-President

November 29, 1933. c
32937—

FREIGHT LAND-GRANT EQUALIZATION AGREEMENT

The Quartermaster General, War Department, Washington,
D. C.

SIR:

1. The following carriers:

Southern Railway Company hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement

of the form stated in paragraph 1 above on file with the [fol. 21] Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

• • • • •

4. This agreement becomes effective December 1, 1933 and remains in effect until January 1, 1935, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted, Southern Railway Company,
E. R. Oliver, Vice-President.

Accepted for The Quartermaster General:
By: R. E. Shannon, Capt., Q.M.C., Ass't.

Date: December 5, 1933.

[fol. 22]

EXHIBIT NO. 2 TO PETITION

Southern Railway System
Office of Vice President
In Charge of Traffic
Washington, D. C.

April 1, 1938. c
32937

FREIGHT LAND-GRANT EQUALIZATION AGREEMENT

The Quartermaster General, War Department, Washington,
D. C.

SIR:

1. The following carriers:

Southern Railway Company hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property

shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from lawful rates filed with the Interstate Commerce Commission or the various State Commissions applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with The Quartermaster General, War Department, [fol. 23] Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

• • • • •
4. This agreement becomes effective May 1st, 1938 and remains in effect until January 1, 1939, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted, Southern Railway Company,
E. R. Oliver, Vice-President.

Accepted for The Quartermaster General:
By: Wilbur S. Elliott, Major, Q. M. Corps, Ass't.

Date: April 25, 1938.

[fol. 24]

EXHIBIT No. 3 TO PETITION.

Federal Emergency Relief Administration
Washington, D. C.

To All State Emergency Relief Administrations:

June 27, 1934.

PROCEDURE IN DROUGHT AREAS

• • • • •
Item 4. Livestock Operations in Emergency Drought Counties.

Livestock buying operations will be conducted by the Drought Relief Service (AAA) in Emergency Drought Counties and will classify stock for (a) condemnation and destruction on the farms, and (b) for donation to the Federal Surplus Relief Corporation. The functions of States Relief Administrations in drought areas are outlined in Section II below. The functions of the Federal Surplus Relief Corporation in the receipt and disposition of the donated livestock are set forth below in Section III.

• • • • •
Section III—Livestock Operations

Item 1. Livestock Purchases.

The purchase of livestock, i. e., cattle, in emergency drought counties will be carried on by the Drought Relief Service (AAA).

Cattle purchased by the Drought Relief Service (AAA) will be classified for disposition as follows:

- a. Condemned for immediate slaughter and disposition on the farm.
- b. Designated as fit for food or for redistribution and donated to Federal Surplus Relief Corporation.

[fol. 25] **Item 3. Functions of Federal Surplus Relief Corporation.**

- a. The Federal Surplus Relief Corporation field operations are in charge of Mr. M. T. Morgan, Special

Representative, FSRC, University Farms, St. Paul, Minnesota. Any questions relating to the disposition and transportation of cattle should be referred immediately to Mr. Morgan who is acting under general instructions from Washington and in close cooperation with the Drought Relief Service (AAA). FSRC will take title to and give proper receipt for all cattle donated for relief purposes as provided under Item 1-b above.

Item 4. Disposition of Cattle.

After cattle have been concentrated at the point or points selected by the FSRC agent, their disposition will be determined by him in the following manner:

a. An opportunity will be afforded the State Emergency Relief Administration representative to take cattle in any classification (X, Bar or Unmarked). This should not, however, be a selection of the best animals in these classes, but an indication of the number desired in each class and delivery by the FSRC agent to the State representative on the basis of selection by the FSRC agent. It should be borne in mind by FSRC agents that all cattle shipped for the account of the Corporation must travel considerable distances, and in many cases it will be desirable to keep the poorer animals for processing under state programs where the haul will be short, and poorer animals will be more likely to survive than if they were shipped for the account of FSRC. Receipt will be taken on the Weekly Disposition Report for all cattle delivered to the State Relief Administration representative. In the case of cattle to be shipped for the account of FSRC, either for redistribution in other states, or for [fol. 26] processing in plants having contracts with FSRC, immediate report will be made by the FSRC agent to Mr. Morgan at St. Paul indicating the number of cattle and calves available for loading by classes as above (X, Bar and Unmarked). Further and more explicit instructions concerning shipments will be issued by Mr. Morgan.

c. Mr. Morgan may exercise discretion in the issuance of shipping instructions for the cattle, disregarding

classification if necessary in particular instances. Wherever practicable, however, he will ship cattle in accordance with their classification. All cattle to be shipped by the FSRC agent under instructions from Mr. Morgan, for redistribution or grazing, will be covered by FSRC Form 10, submitted by the Relief Administration for the State of destination. These Forms 10 will be sent to Mr. Morgan at St. Paul, who will fill them by issuing necessary shipping instructions to FSRC agents in the several counties, after receipt by him of notice from such agents that the proper classes of cattle are available for shipment. All cattle for processing in FSRC contractor's plants will be allocated by Mr. Morgan to the several markets on the basis of reports of availability for shipment from FSRC agents in the counties, and from lists of FSRC contracts supplied from Washington. FSRC Form 10 will not be used for this purpose.

Item 5. Point of Acceptance.

Title to and physical acceptance of cattle tendered by the Drought Relief Service (AAA) will be made by FSRC at railroad stations where holding yards are available or at such other point as may be designated by the FSRC agent. Notwithstanding that cattle may not be accepted by FSRC until arrival at railroad stations it will be the responsibility and expense of the State Relief Administrations, acting through their local or county relief administrations, to provide any necessary physical care for cattle during the period after purchase and until loaded on cars at railroad stations.

Item 7. Redistribution plan.

Disposition of cattle designated as fit for redistribution as subsistence stock will be made as follows:

- a. Cattle for processing and redistribution within the state will be handled as outlined in Item 4-a, above.
- b. Other redistribution of subsistence stock moving outside the state of purchase will be carried out by FSRC under instructions for transportation issued by Mr. Morgan to designated states in which rural rehabilitation programs are under way. Requisition for

subsistence stock will be made by State Relief Administrations in such states upon FSRC, giving full details as to number of cattle which can be distributed within the designated state to farmers on relief and needing subsistence stock. Such requisitions must be made on FSRC Form 10 and must carry all information as to number of cattle, point of destination, etc., necessary to issuance of complete shipping instructions and bills of lading, and the State Relief Administrations must certify that all arrangements are in order for proper receipt and care of such subsistence stock upon arrival at destination points.

Harry L. Hopkins, Administrator.

(Here follow 3 photolithographs, side folios 29, 30, 30a)

EXHIBIT No. 4 TO PETITION

Statement of amounts due by Federal Surplus Relief Corporation, covering
deductions or disallowances made in the settlement of freight
charges on various shipments listed below.

Line	Bill of Lading	Origin	Destination	Charges	Paid	Balance	Item	Bill of Lading	Origin	
1	3532	342 7/23/34	National Stock Yds..Ill.	Davidson Riv..N.C.	\$373.01	\$338.55	\$34.46	75	4635	3416 8/26/34
2	3533	765 7/22/34	Sioux City, Iowa	Ridge Springs,S.C.	251.20	218.77	32.43	76	4636	3412 8/26/34
3	3535	1039 7/22/34	National Stock Yds..Ill.	Clyde, N.C.	466.26	400.96	65.30	77	4637	191 7/16/34
4	3537	1041 7/19/34	So.St.Paul.Minn.	Clyde, N.C.	121.50	114.37	7.13	78	4640	4562 9/6/34
5	3538	1042 7/19/34	So.St.Paul.Minn.	Clyde, N.C.	129.64	120.42	9.22	79	4641	4590 9/10/34
6	3539	1041 7/19/34	So.St.Paul.Minn.	Clyde, N.C.	516.90	453.06	65.84	80	4642	4156 9/2/34
7	3541	724 7/20/34	National Stock Yds..Ill.	Clyde, N.C.	365.01	326.37	36.64	81	4643	3586 8/26/34
8	3565	962 7/26/34	Dichita, Kansas	Lumber City.Ga.	724.66	640.90	63.76	82	4817	4508 9/9/34
9	3575	133 7/21/34	So.St.Paul.Minn.	Ninety Six, S.C.	1,278.83	1,080.88	197.95	83	4818	4511 9/11/34
10	3577	1042 7/20/34	So.St.Paul.Minn.	Asheville, N.C.	532.07	453.56	78.51	84	4819	4510 9/11/34
11	3578	518 7/20/34	Minn.Transfer.Minn.	Asheville, N.C.	295.31	266.76	26.55	85	4855	3319 6/16/34
12	3579	1042 7/20/34	So.St.Paul.Minn.	Clyde, N.C.	527.15	450.21	76.94	86	4856	3470 8/24/34
13	3580	1042 7/20/34	So.St.Paul.Minn.	Asheville, N.C.	532.18	494.35	37.83	87	4857	3713 6/27/34
14	3581	519 7/20/34	Minn.Transfer.Minn.	Asheville, N.C.	2,341.05	2,140.42	200.63	88	4858	1772 6/6/34
15	3594	1912 6/5/34	Sioux City, Iowa	Clayton, N.C.	263.30	242.74	20.56	89	4861	3155 6/16/34
16	3595	1901 6/5/34	Sioux City, Iowa	Clayton, N.C.	263.30	237.16	26.14	90	4876	3322 6/16/34
17	3596	1625 6/1/34	So.St.Paul.Minn.	Newton, N.C.	772.89	717.39	55.50	91	4877	4566 9/11/34
18	3597	1081 6/1/34	U. S. Yards. Ill.	Asheville, N.C.	316.60	273.34	45.26	92	4878	767 7/23/34
19	3598	1063 8/1/34	U. S. Yards. Ill.	Asheville, N.C.	424.80	383.15	41.65	93	4880	1024 7/26/34
20	3599	1168 8/1/34	U. S. Yards. Ill.	Asheville, N.C.	544.90	431.24	113.66	94	4882	1162 6/3/34
21	3600	1921 8/5/34	Sioux City, Iowa	Asheville, N.C.	941.20	863.71	77.49	95	4883	785 7/23/34
22	3601	1918 8/5/34	Sioux City, Iowa	Asheville, N.C.	705.90	647.78	58.12	96	4884	3375 6/20/34
23	3602	1919 6/4/34	Sioux City, Iowa	Davidson Riv..N.C.	2,186.65	1,692.63	294.02	97	4885	744 7/13/34
24	3663	1056 6/1/34	Chicago, Ill.	Clyde, N.C.	1,274.40	1,077.78	196.62	98	4886	706 7/23/34
25	3665	2645 6/6/34	Kansas City, Mo.	Lumber City, Ga.	672.98	604.82	68.16	99	4887	3164 6/20/34
26	3667	1043 7/30/34	Chicago, Ill.	Sylva, N.C.	666.00	792.72	74.08	100	4889	3733 6/24/34
27	3669	3173 6/14/34	So.St.Paul.Minn.	Columbia, S.C.	777.01	676.31	96.70	101	4890	4525 9/10/34
28	3671	1030 6/7/34	So.St.Paul.Minn.	Columbia, S.C.	259.00	226.10	32.90	102	4891	4537 9/10/34
29	3672	1120 6/7/34	So.St.Paul.Minn.	Columbia, S.C.	259.00	226.10	32.90	103	4894	4544 9/13/34
30	3683	340 7/20/34	E.St.Louis.Ill.	Waynesville,N.C.	196.65	175.63	20.82	104	4895	1319 7/31/34
31	3689	517 7/30/34	Chicago, Ill.	Marshall, N.C.	525.63	443.38	82.25	105	5212	4131 9/4/34
32	3726	1914 6/5/34	Sioux City, Iowa	Princeton,N.C.	263.30	243.38	19.92	106	5213	3467 6/21/34
33	3727	984 7/26/34	So.St.Paul.Minn.	Chappell,S.C.	647.51	562.41	85.10	107	5226	3354 6/23/34
34	3730	3167 8/16/34	Milwaukee, wis.	York, S.C.	763.95	629.30	154.65	108	5229	3351 6/23/34
35	3742	1082 6/1/34	Chicago, Ill.	Clayton, N.C.	363.75	306.47	57.28	109	5230	337 6/22/34
36	3743	1909 6/5/34	Sioux City, Iowa	Princeton,N.C.	394.95	365.06	29.89	110	5231	1046 8/31/34
37	3744	1774 6/12/34	So.St.Paul.Minn.	York, S.C.	892.52	776.84	115.68	111	5232	1065 6/31/34
38	3745	2614 6/13/34	So.Omaha, Neb.	York, S.C.	1,920.49	1,542.51	377.98	112	5549	4719 9/15/34
39	3746	2613 6/13/34	So.Omaha, Neb.	York, S.C.	1,564.79	1,524.23	340.56	113	5550	3347 9/1/34
40	3747	3166 6/21/34	Milwaukee, Wis.	York, S.C.	635.56	669.93	165.63	114	5551	3553 6/25/34
41	3691	3224 8/14/34	Minn.Transfer.Minn.	University,N.C.	266.50	265.49	21.01	115	5552	4568 9/10/34
42	3692	1915 6/5/34	Sioux City, Iowa	Wilson Mills,N.C.	266.40	246.11	20.29	116	5553	4591 9/15/34
43	3693	1907 6/5/34	Sioux City, Iowa	Princeton, N.C.	658.25	594.17	64.08	117	5554	3469 6/21/34
44	3694	3465 8/20/34	New Brighton, Minn.	Asheville, N.C.	1,244.65	1,082.25	162.40	118	5555	516 7/20/34
45	4219	732 7/22/34	National Stock Yds..Ill.	Goldsboro, N.C.	104.55	95.02	9.53	119	5556	115 7/17/34
46	4220	2630 6/14/34	Minn.Transfer.Minn.	Union, S.C.	126.96	110.11	16.65	120	5706	3194 6/14/34
47	4221	2631 6/14/34	Minn.Transfer.Minn.	Union, S.C.	126.96	110.11	16.65	121	5836	3321 6/18/34
48	4222	2633 6/15/34	So.St.Paul,Minn.	Union, S.C.	885.52	767.54	117.98	122	5896	3560 6/25/34
49	4223	2629 6/14/34	So.St.Paul,Minn.	Union, S.C.	379.51	328.95	50.56	123	5897	3737 6/29/34
50	4224	2632 6/14/34	Minn.Transfer.Minn.	Union, S.C.	309.72	267.06	42.64	124	5898	3576 6/22/34
51	4225	3159 6/15/34	So.St.Paul, Minn.	Newberry, S.C.	368.51	338.49	50.02	125	9900	1045 6/31/34
52	4227	2624 6/15/34	So.St.Paul, Minn.	Rockton, S.C.	652.51	561.66	70.65	126	5966	127 7/20/34
53	4228	2625 6/15/34	So.St.Paul, Minn.	Ridgeway, S.C.	1,044.02	915.22	126.80	127	6093	126 7/20/34
54	4230	750 7/22/34	Sioux City, Iowa	Johnston, S.C.	251.30	218.15	33.15	128	6094	996 7/27/34
55	4232	1756 6/6/34	Sioux City, Iowa	Jedburg, S.C.	305.95	338.69	47.26	129	6216	4590 9/10/34
56	4234	3486 6/23/34	west Chicago, Ill.	Shounes, Tenn.	227.20	209.10	18.10	130	6259	3350 6/23/34
57	4358	3381 6/22/34	New Brighton, Minn.	Broadmax, Va.	148.81	135.60	13.21	131	6260	3474 6/21/34
58	4359	1040 7/22/34	National Stock Yds..Ill.	Goldsboro, N.C.	1,052.52	953.14	99.38	132	6261	3471 6/21/34
59	4360	339 6/22/34	Milwaukee, Wis.	Asheville, N.C.	610.50	480.91	129.59	133	6262	3472 6/21/34
60	4361	3325 6/2/34	So.St.Paul, Minn.	Asheville, N.C.	1,093.52	956.41	135.11	134	6263	3558 6/25/34
61	4362	3464 6/21/34	So.St.Paul, Minn.	Pisgah Forest,N.C.	2,223.03	2,067.74	155.29	135	6264	1047 6/30/34
62	4363	3324 6/16/34	New Brighton, Minn.	Pisgah Forest,N.C.	2,111.78	1,638.06	273.72	136	6265	1046 6/30/34
63	4616	1069 6/31/34	So.St.Paul, Minn.	Taylorsville,N.C.	127.50	118.75	8.75	137	6275	4155 9/4/34
64	4619	1086 6/21/34	So.St.Paul, Minn.	Taylorsville,N.C.	362.51	356.28	26.23	138	6464	3468 6/24/34
					139.48	121.82	5.08	139	6467	127 7/20/34
										Sioux City, Iowa

deductions or disallowances made in the settlement of freight
charges on various shipments listed below

Line	Bill	Bill of Lading	Origin	Destination	Chargers	Paid	Balance	Item	Bill of Lading		Origin	
									Bill	Lading		
1	3532	342	7/23/34	National Stock Yds..Ill.	Davidson Riv.,N.C.	\$373.01	\$338.55	\$34.46	75	4635	3416 8/26/34	So.St.Paul. Minn.
2	3533	765	7/22/34	Sioux City. Iowa	Ridge Springs,S.C.	251.20	218.77	32.43	76	4636	3412 8/26/34	So.St.Paul. Minn.
3	3535	1039	7/22/34	National Stock Yds..Ill.	Clyde. N.C.	466.26	400.96	65.30	77	4637	191 7/16/34	Kansas City. Mo.
4	3537	1041	7/19/34	So.St.Paul.Minn.	Clyde. N.C.	121.50	114.37	7.13	78	4640	4582 9/6/34	New Brighton. Minn.
5	3538	1042	7/19/34	So.St.Paul.Minn.	Clyde. N.C.	129.64	120.42	9.22	79	4641	4590 9/10/34	New Brighton. Minn.
6	3539	1041	7/19/34	So.St.Paul.Minn.	Clyde. N.C.	516.90	453.06	65.84	80	4642	4156 9/2/34	So.St.Paul. Minn.
7	3541	724	7/20/34	National Stock Yds..Ill.	Clyde. N.C.	365.01	326.37	36.64	81	4643	3586 8/26/34	New Brighton. minn.
8	3565	962	7/26/34	Wichita. Kansas	Lumber City.Ga.	724.66	640.90	83.76	82	4817	4508 9/9/34	New Brighton. Minn.
9	3575	133	7/21/34	So.St.Paul.Minn.	Ninety Six. S.C.	1,278.83	1,080.88	197.95	83	4618	4511 9/11/34	New Brighton. minn.
10	3577	1042	7/20/34	So.St.Paul.Minn.	Asheville. N.C.	532.07	453.56	78.51	84	4619	4510 9/11/34	New Brighton. Minn.
11	3576	518	7/20/34	Minn.Transfer.Minn.	Asheville. N.C.	295.31	266.76	26.55	85	4655	3319 8/18/34	So.St.Paul. Minn.
12	3579	1042	7/20/34	So.St.Paul.Minn.	Clyde. N.C.	527.15	450.21	76.94	86	4856	3470 8/24/34	So.St.Paul. Minn.
13	3580	1042	7/20/34	So.St.Paul.Minn.	Asheville. N.C.	532.18	494.35	37.83	87	4657	3713 8/27/34	New Brighton. Minn.
14	3581	519	7/20/34	Minn.Transfer.Minn.	Asheville. N.C.	2,341.05	2,140.42	200.63	88	4858	1772 8/6/34	Sioux City. Iowa
15	3594	1912	8/5/34	Sioux City. Iowa	Clayton. N.C.	263.30	242.74	20.56	89	4861	3155 8/16/34	Sioux City. Iowa
16	3595	1901	8/5/34	Sioux City. Iowa	Clayton. N.C.	263.30	237.16	26.14	90	4676	3322 8/18/34	So.St.Paul. Minn.
17	3596	1625	8/1/34	So.St.Paul.Minn.	Newton. N.C.	772.89	717.39	55.50	91	4677	4566 9/11/34	New Brighton. Minn.
18	3597	1081	8/1/34	U. S. Yards. Ill.	Asheville. N.C.	316.60	273.34	45.26	92	4876	767 7/23/34	New Brighton. Minn.
19	3598	1063	8/1/34	U. S. Yards. Ill.	Asheville. N.C.	424.80	383.15	41.65	93	4880	1024 7/26/34	So.St.Paul. Minn.
20	3599	1166	8/1/34	U. S. Yards. Ill.	Asheville. N.C.	544.90	431.24	113.66	94	4882	1162 8/3/34	So.St.Paul. Minn.
21	3600	1921	8/5/34	Sioux City. Iowa	Asheville. N.C.	941.20	863.71	77.49	95	4603	785 7/23/34	New Brighton. Minn.
22	3601	1918	8/5/34	Sioux City. Iowa	Asheville. N.C.	705.90	647.78	58.12	96	4884	3375 8/20/34	New Brighton. Minn.
23	3602	1919	8/4/34	Sioux City. Iowa	Davidson Riv.,N.C.	2,186.65	1,692.63	294.02	97	4885	784 7/13/34	New Brighton. Minn.
24	3663	1056	8/1/34	Chicago. Ill.	Clyde. N.C.	1,274.40	1,077.78	196.62	98	4886	706 7/23/34	New Brighton. Minn.
25	3665	2645	8/8/34	Kansas City. Mo.	Lumber City. Ga.	672.96	604.82	68.16	99	4887	3164 8/20/34	Milwaukee. Wis.
26	3667	1043	7/30/34	Chicago. Ill.	Sylva. N.C.	666.00	792.72	74.08	100	4889	3733 8/24/34	New Brighton. Minn.
27	3669	3173	8/14/34	So.St.Paul.Minn.	Columbia. S.C.	777.01	676.31	96.70	101	4890	4525 9/10/34	So.St.Paul. Minn.
28	3671	1030	8/7/34	So.St.Paul.Minn.	Columbia. S.C.	259.00	226.10	32.90	102	4891	4537 9/10/34	So.St.Paul. Minn.
29	3672	1120	8/7/34	So.St.Paul.Minn.	Waynesville.N.C.	196.65	175.63	20.82	104	4894	4544 9/13/34	So.St.Paul. Minn.
30	3683	340	7/20/34	E.St.Louis.Ill.	Marshall. N.C.	525.63	443.38	82.25	105	5212	1319 7/31/34	So.St.Paul. Minn.
31	3689	517	7/30/34	Chicago. Ill.	Princeton,N.C.	263.30	243.38	19.92	106	5213	4131 9/4/34	New Brighton. Minn.
32	3726	1914	8/5/34	Sioux City. Iowa	Chappell,S.C.	647.51	562.41	85.10	107	5226	3354 8/23/34	So.St.Paul. Minn.
33	3727	984	7/26/34	So.St.Paul.Minn.	York. S.C.	763.95	629.30	154.65	108	5229	3351 8/23/34	So.St.Paul. Minn.
34	3730	3167	8/16/34	Milwaukee. wis.	Clayton. N.C.	363.75	306.47	57.28	109	5230	337 8/22/34	So.St.Paul. Minn.
35	3742	1082	8/1/34	Chicago. Ill.	Princeton,N.C.	394.95	365.06	29.89	110	5231	1046 8/31/34	So.St.Paul. Minn.
36	3743	1909	8/5/34	Sioux City. Iowa	York. S.C.	692.52	776.84	115.68	111	5232	1065 8/31/34	So.St.Paul. Minn.
37	3744	1774	8/12/34	So.St.Paul.Minn.	York. S.C.	1,920.49	1,542.51	377.98	112	5549	4719 9/15/34	New Brighton.Minn.
38	3745	2614	8/13/34	So.Omaha. Neb.	York. S.C.	1,664.79	1,524.23	340.56	113	5550	3347 9/1/34	So.St.Paul. Minn.
39	3746	2613	8/13/34	So.Omaha. Neb.	York. S.C.	635.56	669.93	165.63	114	5551	3553 8/25/34	New Brighton. Minn.
40	3747	3166	8/21/34	Milwaukee. wis.	University.N.C.	266.50	265.49	21.01	115	5552	4568 9/10/34	New Brighton. Minn.
41	3691	3224	8/14/34	Minn.Transfer.Minn.	Wilson Hills.N.C.	266.40	246.11	20.29	116	5553	4591 9/15/34	New Brighton. Minn.
42	3692	1915	8/5/34	Sioux City. Iowa	Princeton. N.C.	658.25	594.17	64.08	117	5554	3469 8/21/34	So.St.Paul. minn.
43	3693	1907	8/5/34	Sioux City. Iowa	Asheville. N.C.	1,244.65	1,082.25	162.40	118	5555	516 7/20/34	E.St.Louis. Ill.
44	3694	3465	8/20/34	New Brighton. Minn.	Goldsboro. N.C.	104.55	95.02	9.53	119	5556	115 7/17/34	So.St.Paul. Minn.
45	4219	732	7/22/34	National Stock Yds..Ill.	Union. S.C.	126.96	110.11	16.85	120	5706	3194 8/14/34	So.St.Paul. Minn.
46	4220	2630	8/14/34	Minn.Transfer.Minn.	Union. S.C.	126.96	110.11	16.85	121	5836	3321 8/18/34	So.St.Paul. Minn.
47	4221	2631	8/14/34	Minn.Transfer.Minn.	Union. S.C.	885.52	767.54	117.98	122	5896	3560 8/25/34	New Brighton. Minn.
48	4222	2633	8/15/34	So.St.Paul.Minn.	Union. S.C.	379.51	326.95	50.56	123	5897	3737 8/29/34	New Brighton. Minn.
49	4223	2629	8/14/34	So.St.Paul.Minn.	Union. S.C.	309.72	267.06	42.64	124	5898	3576 8/22/34	New Brighton. Minn.
50	4224	2632	8/14/34	Minn.Transfer.Minn.	Newberry. S.C.	368.51	338.49	50.02	125	5900	1045 8/31/34	So.St.Paul. Minn.
51	4225	3159	8/15/34	So.St.Paul. Minn.	Rockton. S.C.	652.51	561.86	70.65	126	5966	127 7/20/34	Sioux City. Iowa
52	4227	2624	8/15/34	So.St.Paul. Minn.	Ridgeway. S.C.	1,044.02	915.22	128.60	127	6093	128 7/20/34	Sioux City. Iowa
53	4228	2625	8/15/34	So.St.Paul. Minn.	Johnston. S.C.	251.30	218.15	33.15	128	6094	996 7/27/34	So.St.Paul. Minn.
54	4230	750	7/22/34	Sioux City. Iowa	Jedburg. S.C.	365.95	338.69	47.26	129	6216	4590 9/10/34	New Brighton. Minn.
55	4232	1756	8/6/34	Sioux City. Iowa	Shoun's. Tenn.	227.20	209.10	18.10	130	6259	3350 8/23/34	So.St.Paul. Minn.
56	4234	3486	8/23/34	west Chicago. Ill.	Broadnax. Va.	148.81	135.60	13.21	131	6260	3474 8/21/34	So.St.Paul. Minn.
57	4356	3361	8/22/34	New Brighton. Minn.	Goldsboro. N.C.	1,052.52	953.14	99.38	132	6261	3471 8/21/34	So.St.Paul. Minn.
58	4359	1040	7/22/34	National Stock Yds..Ill.	Asheville. N.C.	610.50	480.91	129.59	133	6262	3472 8/21/34	So.St.Paul. Minn.
59	4360	339	6/22/34	Milwaukee. Wis.	Asheville. N.C.	1,093.52	956.41	135.11	134	6263	3556 8/25/34	New Brighton. Minn.
60	4361	3325	8/2/34	So.St.Paul. Minn.	Pisgah Forest.N.C.	2,223.03	2,067.74	155.29	135	6264	1047 8/30/34	So.St.Paul. Minn.
61												

EXHIBIT No. 4 TO PETITION

Statement of amounts due by Federal Surplus Relief Corporation, covering
deductions or disallowances made in the settlement of freight
charges on various shipments listed below

Destination	Charges	Paid	Balance	Item	Bill of			Origin	Destination	Charges	Paid	Balance
					Bill	Lading	Origin					
Davidson Riv., N.C.	4373.01	4338.55	434.46	75	4635	3416	8/26/34	So.St.Paul. Minn.	Cochran, Ga.	4829.84	4817.20	912.64
Ridge Springs, S.C.	251.20	218.77	32.43	76	4636	3412	8/26/34	So.St.Paul. Minn.	Cochran, Ga.	1,555.95	1,545.99	9.96
Clyde, N.C.	466.26	400.96	65.30	77	4637	191	7/16/34	Kansas City, Mo.	Hazelhurst, Ga.	711.70	676.80	34.90
Clyde, N.C.	121.50	114.37	7.13	78	4640	4582	9/6/34	New Brighton, Minn.	Princeton, N.C.	831.53	775.28	56.25
Clyde, N.C.	129.64	120.42	9.22	79	4641	4590	9/10/34	New Brighton, Minn.	Sylva, N.C.	694.29	643.24	51.05
Clyde, N.C.	516.90	453.06	65.84	80	4642	4156	9/2/34	So.St.Paul. Minn.	York, S.C.	1,402.52	1,220.73	181.79
Clyde, N.C.	365.01	326.37	36.64	81	4643	3586	8/26/34	New Brighton, minn.	Clarksville, Va.	135.80	124.32	11.48
Lumber City, Ga.	724.66	640.90	83.76	82	4817	4508	9/9/34	New Brighton, Minn.	Brown Summit, N.C.	264.04	245.40	18.64
Ninety Six, S.C.	1,278.83	1,080.88	197.95	83	4618	4511	9/11/34	New Brighton, Minn.	Bonaja, N.C.	281.60	261.14	20.46
Asheville, N.C.	532.07	453.56	78.51	84	4619	4510	9/11/34	New Brighton, Minn.	Bonaja, N.C.	290.55	269.36	21.19
Asheville, N.C.	295.31	266.76	26.55	85	4655	3319	6/16/34	So.St.Paul. Minn.	Clyde, N.C.	1,579.53	1,473.14	106.39
Clyde, N.C.	527.15	450.21	76.94	86	4856	3470	6/24/34	So.St.Paul. Minn.	Clyde, N.C.	364.51	339.96	24.55
Asheville, N.C.	532.18	494.35	37.83	87	4857	3713	6/27/34	New Brighton, Minn.	Haynes, S.C.	1,116.77	958.81	157.96
Asheville, N.C.	2,341.05	2,140.42	200.63	88	4858	1772	6/6/34	Sioux City, Iowa	Greenwood, S.C.	674.39	576.02	98.37
Clayton, N.C.	263.30	242.74	20.56	89	4861	3155	6/16/34	Sioux City, Iowa	Rockton, S.C.	683.40	595.18	86.22
Clayton, N.C.	263.30	237.16	26.14	90	4876	3322	6/16/34	So.St.Paul. Minn.	Sylva, N.C.	1,111.52	1,036.95	74.57
Newton, N.C.	772.89	717.39	55.50	91	4877	4586	9/11/34	New Brighton, Minn.	Davidson River, N.C.	123.80	114.86	8.94
Asheville, N.C.	316.60	273.34	45.26	92	4878	767	7/23/34	New Brighton, Minn.	Spartanburg, S.C.	275.92	236.60	39.32
Asheville, N.C.	424.80	383.15	41.65	93	4880	1024	7/26/34	So.St.Paul. Minn.	Spartanburg, S.C.	622.51	537.46	85.05
Asheville, N.C.	544.90	431.24	113.66	94	4882	1162	6/3/34	So.St.Paul. Minn.	Hayne, S.C.	753.01	644.95	108.06
Asheville, N.C.	941.20	863.71	77.49	95	4883	785	7/23/34	New Brighton, Minn.	Hayne, S.C.	125.18	112.20	12.98
Asheville, N.C.	705.90	647.78	58.12	96	4884	3375	6/20/34	New Brighton, Minn.	Hayne, S.C.	1,832.13	1,563.64	248.49
Davidson Riv., N.C.	2,186.65	1,692.63	294.02	97	4885	784	7/13/34	New Brighton, Minn.	Hayne, S.C.	414.04	356.07	57.97
Clyde, N.C.	1,274.40	1,077.78	196.62	98	4886	706	7/23/34	New Brighton, Minn.	Spartanburg, S.C.	130.88	116.83	14.05
Lumber City, Ga.	672.98	604.82	68.16	99	4887	3164	6/20/34	Milwaukee, Wis.	Spartanburg, S.C.	1,673.44	1,325.31	348.13
Sylva, N.C.	666.00	792.72	74.06	100	4889	3733	6/24/34	New Brighton, Minn.	Columbia, S.C.	466.65	406.06	60.59
Columbia, S.C.	777.01	676.31	96.70	101	4890	4525	9/10/34	So.St.Paul. Minn.	Cochran, Ga.	516.65	517.49	1.16
Columbia, S.C.	259.00	226.10	32.90	102	4891	4537	9/10/34	So.St.Paul. Minn.	Westlake, Ga.	518.65	515.33	3.32
Columbia, S.C.	259.00	226.10	32.90	103	4894	4544	9/13/34	So.St.Paul. Minn.	Towalaga, Ga.	407.14	396.29	10.85
Waynesville, N.C.	196.65	175.63	20.82	104	4895	1319	7/31/34	So.St.Paul. Minn.	Flat Rock, Ga.	197.42	191.47	5.95
Marshall, N.C.	525.63	443.38	82.25	105	5212	4131	9/4/34	New Brighton, Minn.	Clayton, N.C.	824.11	746.71	77.40
Princeton, N.C.	263.30	243.38	19.92	106	5213	3467	6/21/34	So.St.Paul. Minn.	Bryson, N.C.	996.01	929.27	66.74
Chappell, S.C.	647.51	562.41	85.10	107	5226	3354	8/23/34	So.St.Paul. Minn.	Statesville, N.C.	614.01	570.13	43.88
York, S.C.	763.95	629.30	154.65	108	5229	3351	6/23/34	So.St.Paul. Minn.	Statesville, N.C.	307.00	290.59	16.41
Clayton, N.C.	363.75	306.47	57.28	109	5230	337	6/22/34	So.St.Paul. Minn.	Statesville, N.C.	419.00	404.70	14.30
Princeton, N.C.	394.95	365.06	29.89	110	5231	1046	8/31/34	So.St.Paul. Minn.	Statesville, N.C.	127.50	118.74	8.76
York, S.C.	892.52	776.84	115.68	111	5232	1065	6/31/34	So.St.Paul. Minn.	Statesville, N.C.	127.50	118.87	8.63
York, S.C.	1,920.49	1,542.51	377.98	112	5549	4719	9/15/34	New Brighton, Minn.	Graham, N.C.	132.80	121.02	11.78
York, S.C.	1,664.79	1,524.23	340.56	113	5550	3347	9/1/34	So.St.Paul. Minn.	Winston-Salem, N.C.	516.00	471.45	46.55
York, S.C.	635.56	669.93	165.63	114	5551	3553	6/25/34	New Brighton, Minn.	Winston-Salem, N.C.	277.63	251.47	26.16
University, N.C.	266.50	265.49	21.01	115	5552	4568	9/10/34	New Brighton, Minn.	Asheville, N.C.	935.67	847.24	88.43
Wilson Mills, N.C.	266.40	246.11	20.29	116	5553	4591	9/15/34	New Brighton, Minn.	Asheville, N.C.	267.98	248.35	19.63
Princeton, N.C.	658.25	594.17	64.08	117	5554	3469	6/21/34	So.St.Paul. Minn.	Clyde, N.C.	245.00	221.40	23.60
Asheville, N.C.	1,244.65	1,082.25	162.40	118	5555	516	7/20/34	E.St.Louis, Ill.	Balsam, N.C.	186.50	161.36	25.14
Goldsboro, N.C.	104.55	95.02	9.53	119	5556	115	7/17/34	So.St.Paul. Minn.	Matthews, S.C.	838.92	731.00	107.92
Union, S.C.	126.96	110.11	16.85	120	5706	3194	6/14/34	So.St.Paul. Minn.	Boydton, Va.	948.51	889.10	59.41
Union, S.C.	126.96	110.11	16.85	121	5836	3321	6/16/34	So.St.Paul. Minn.	Kurphy, N.C.	1,066.52	981.62	84.90
Union, S.C.	885.52	767.54	117.98	122	5896	3560	6/25/34	New Brighton, Minn.	Oconeechesee, N.C.	1,635.86	1,326.22	309.64
Union, S.C.	379.51	328.95	50.56	123	5897	3737	6/29/34	New Brighton, Minn.	Hillsboro, N.C.	172.54	160.02	12.52
Union, S.C.	309.72	267.06	42.64	124	5898	3576	6/22/34	New Brighton, Minn.	Hillsboro, N.C.	170.61	158.24	12.37
Newberry, S.C.	368.51	338.49	50.02	125	5900	1045	6/31/34	So.St.Paul. Minn.	Ridgeway, S.C.	243.00	212.96	30.04
Rockton, S.C.	652.51	561.66	70.65	126	5966	127	7/20/34	Sioux City, Iowa	Woodward, S.C.	609.09	597.19	11.90
Ridgeway, S.C.	1,044.02	915.22	126.80	127	6093	126	7/20/34	Sioux City, Iowa	Johnston, S.C.	551.43	474.31	77.12
Johnston, S.C.	251.30	218.15	33.15	128	6094	996	7/27/34	So.St.Paul. Minn.	Bryson, N.C.	259.00	225.69	33.31
Jedburg, S.C.	305.95	338.69	47.26	129	6216	4590	9/10/34	New Brighton, Minn.	Taylorville, N.C.	424.57	394.03	30.54
Shoals, Tenn.	227.20	209.10	18.10	130	6259	3350	6/23/34	So.St.Paul. Minn.	Stovall, N.C.	255.00	232.23	22.77
Broadmax, Va.	148.81	135.60	13.21	131	6260	3474	6/21/34	So.St.Paul. Minn.	Hillsboro, N.C.	140.00	126.76	13.24
Goldsboro, N.C.	1,052.52	953.14	99.38	132	6261	3471	6/21/34	So.St.Paul. Minn.	Hillsboro, N.C.	265.00	242.04	22.96
Asheville, N.C.	610.50	480.91	129.59	133	6262	3472	8/21/34	So.St.Paul. Minn.	Mocksville, N.C.	835.49	772.07	63.42
Asheville, N.C.	1,093.52	956.41	135.11	134	6263	3558	6/25/34	New Brighton, Minn.	Newton, N.C.	126.50	118.72	7.78
Pisgah Forest, N.C.	2,223.03	2,067.74	155.29	135	6264	1047	6/30/34	So.St.Paul. Minn.	Newton, N.C.	126.50	118.72	7.78
Pisgah Forest, N.C.	2,111.78	1,638.06	273.72	136	6265	1046	6/30/34	So.St.Paul. Minn.	Lancaster, S.C.	388.51	339.66	48.85
Taylorsville, N.C.	127.50	118.75	8.75	137	6275	4155	9/4/34	So.St.Paul. Minn.	Balsam, N.C.	247.00		

CONTRACT TERMS AND CONDITIONS.

Sec. 1. (a) Except in the case of its negligence proximately contributing thereto, no carrier or party in possession of all or any of the live stock herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, the inherent vice, weakness, or natural propensity of the animal, or the act or default of the shipper or owner, or the agent of either, or by riot, strike, stoppage of labor or threatened violence.

(b) Unless caused by the negligence of the carrier or his employee, no carrier shall be liable for or on account of any injury or death sustained by said live stock occasioned by any of the following causes: Overloading, crowding one upon another, running from cars, pens, or vessels, kicking or goring or otherwise injuring themselves or each other, suffocation, fright, or fire caused by the owner or the shipper's agent, heat or cold, changes in weather or delay caused by stress of weather or damage to or obstruction of track or other causes beyond the carrier's control.

(c) In case of quarantine, the live stock may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's discharge, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carriers at owner's expense to shipping point, carrying freight both ways. Quarantine expense of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or by a line thereon. In case a shipment is stopped in transit by quarantine, the carrier shall immediately give notice of such fact to the shipper or owner. Except in the case of its negligence proximately contributing thereto, no carrier shall be liable for loss or damage occasioned by quarantine or disinfection or other acts required or done under quarantine regulations or authorities, nor for detention, loss, or damage of any kind occasioned by quarantine laws or in the enforcement thereof; and the shipper shall hold the carrier harmless for any expense it may incur or damages it may be required to pay by reason thereof.

Sec. 2. (a) No carrier is bound to transport said live stock by any particular train or vessel or in time for any particular market, or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said live stock by any carrier or route between the point of shipment and the point of destination.

(b) In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the live stock as determined by the classification or tariffs upon which the rate is based, such lower value, plus freight charges, if paid, shall be the maximum amount to be recovered whether or not such loss or damage occurs from negligence.

(c) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted therein in accordance with the foregoing provisions, no carrier hereinafter shall be liable, and such claims will not be paid.

Sec. 3. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this live stock contract until all tariff rates and charges thereon have been paid. The consigner shall be liable for the freight and all other lawful charges, except that if the consigner stipulates, by signature, in the space provided for that purpose on the face of this contract that the carrier shall not make delivery without requiring payment of such charges, and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consigner (except as hereinafter provided) shall not be liable for such charge. Provided, that, where the carrier has been instructed by the shipper or consigner to deliver said property to a consignee other than the shipper or consigner, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original contract, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such case, the shipper or consigner, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee gives to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this Live Stock Contract, the freight charges must be paid upon the articles actually shipped.

Sec. 4. (a) The shipper at his own risk and expense shall load and unload the live stock into and out of cars, except in those instances where this duty is made obligatory upon the carrier by statute or is assumed by a lawful tariff provision. In case any person shall accompany the live stock in charge of same, he shall take care of, feed and water the live stock while being transported, whether delayed in transit or otherwise, and whenever such person shall open or close any door or opening in the car or cars, or the pens or compartments in the vessel, he shall see that the same are so closed and fastened as to prevent the escape therefrom of any of the live stock.

(b) When bedding or appliances of a character not generally in use in the transportation of live stock are required, they shall be furnished by the shipper at his own expense and he shall separate different kinds of stock when loaded in the same car by adequately strong partitions and each stock shall be at the risk of the shipper as to any damage resulting from the insufficiency or inadequacy of any such bedding, appliance, or partition.

(c) Before the live stock is removed from the premises of the carrier or mingled with other live stock the shipper, owner, consignee or agent thereof shall inform in writing the delivering carrier of any visible or manifest injury to the live stock.

Sec. 5. (a) If all or any part of said live stock is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of and all the exemptions from liability contained in the Act of the Congress of the United States, approved on February 13, 1890, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lake, sea, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prudential regulation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the live stock herein described shall be at liberty to call at any port or ports, in or out of the customary route, to load and to unload, to tranship, or lighter, to load and discharge goods at any time, and most vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to live stock if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules of 1924, Sections 1 to 18, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby, according to the law and usage of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignee and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the live stock is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this uniform live stock contract.

(f) The term "water carriage" in this section shall not be construed as including lightering in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 6. Any alteration, addition, or erasure in this contract which shall be made without an endorsement thereof hereon, signed by the agent of the carrier issuing this agreement, shall be without effect, and this agreement shall be enforceable according to its original tenor.

SEPARATE CONTRACT WITH MAN OR MEN IN CHARGE OF LIVE STOCK

Station, 30.

In consideration of the carriage of the undersigned upon a freight train or vessel in charge of the live stock mentioned in the within contract, whether with or without charge for such carriage, each one of the undersigned severally hereby voluntarily assumes all risk of accident or damage to his person or property, and hereby releases and discharges each and every carrier from every claim, liability, or demand of any kind for or on account of any personal injury or damage of any kind sustained by him, unless caused by the negligence of such carrier or any of its employees; and agrees that whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, except where the negligence of the carrier proximately contributes thereto; and that no carrier shall be required to stop or start its train or caboose cars at or from the depot or platforms, or to furnish light for his accommodation or safety.

(Signature of man or men in charge.)

Witness.

[fols. 31-32] EXHIBIT No. 6 TO PETITION

Property of the Federal Government

Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in same manner as if under a Government bill of lading.

Consignee's Certificate of Delivery

I have this day received from — (Name of transportation company) at—(Actual point of delivery by carrier) the public property in this bill of lading, in apparent good condition, except as noted on the reverse hereof.

Weight— (In words) pounds. —(In figures)

—(Consignee) —, 19— (Date)

Instructions for Billing

1. Consignee should pay no charges on this shipment.
2. Charges to be billed to the Dept. or Estab. and Bu. or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

(Here follow 3 photolithographs, side folios 33, 33a, 34)

EXHIBIT NO. 7 TO PETITION
UNITED STATES OF AMERICA



GOVERNMENT BILL
OF LADING

ORIGINAL

BILL TO

(Department or Establishment and Bureau or Service)

SEE REVERSE
HEREOF

(Appropriation chargeable)

(Issuing office)

, 19

RECEIVED FROM

(Name and title of issuing officer)

(Date issued)

by the
(Name of transportation company)
in apparent good order and condition (contents and value unknown), to be forwarded subject to conditions stated on the reverse hereof,
from to
(Shipping point) (Destination)
by the said company and connecting lines, there to be delivered in like good order and condition to
(Consignee)

VIA

(Route journey only when some substantial interest of the Government is subserved thereby)

MARKS	NUMBERS ON PACKAGES	NUMBER AND KIND OF PACKAGES	DESCRIPTION OF ARTICLES (Observe strictly carrier's freight classification. Avoid trade or technical names)	WEIGHTS *

SIZE CAR ORDERED FT. SIZE CAR FURNISHED FT. DATE FURNISHED INITIALS CAR NO.

TARIFF AUTHORITY
(To be filled in by general office rendering account)

(Name of transportation company)

AUTHORITY FOR SHIPMENT

, 19 PER (Agent)

CERTIFICATE OF ISSUING OFFICER
(To be filled out when this bill of lading is issued for use by contractor in making shipment)

Contract No., or Purchase Order No., dated , 19

(F. O. B. point named in contract)

(Issuing office)

(CARRIER'S RIGHTS TO SHIPPING CHARGES NOT AFFECTED BY FACTS SET OUT IN THIS CERTIFICATE)

CONSIGNEE'S CERTIFICATE OF DELIVERY

I have this day received from
(Name of transportation company)
at
(Actual point of delivery by carrier)
the public property described in this bill
of lading, in apparent good order and condition, except as noted on the reverse hereof.

Weight pounds.
(In words) (In figures) , 19
(Consignee) (Date)

INSTRUCTIONS FOR BILLING

1. Consignee should pay no charges on this shipment.
2. Charges to be billed to the Dept. or Estab. and Bu. or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

* Show also cubic measurement for shipments via ocean carrier in cases where required.

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Destination	Charges	Paid	Balance	Item	Bill	Bill of Lading	Origin	Destination	Charges	Paid	Balance
Davidson Riv., N.C.	4373.01	4338.55	34.46	75	4635	3416 8/26/34	So.St.Paul. Minn.	Cochran. Ga.	4829.84	4817.20	312.64
Ridge Springs, S.C.	251.20	218.77	32.43	76	4636	3412 8/26/34	So.St.Paul. Minn.	Cochran. Ga.	1,555.95	1,545.99	9.96
Clyde, N.C.	466.26	400.96	65.30	77	4637	191 7/16/34	Kansas City, Mo.	Hazelhurst, Ga.	711.70	676.80	34.90
Clyde, N.C.	121.50	114.37	7.13	78	4640	4582 9/6/34	New Brighton, Minn.	Princeton, N.C.	831.53	775.28	56.25
Clyde, N.C.	129.64	120.42	9.22	79	4641	4590 9/10/34	New Brighton, Minn.	Sylva, N.C.	694.29	643.24	51.05
Clyde, N.C.	516.90	453.06	65.84	80	4642	4156 9/2/34	So.St.Paul. Minn.	York, S.C.	1,402.52	1,220.73	181.79
Clyde, N.C.	365.01	326.37	36.64	81	4643	3586 8/26/34	New Brighton, Minn.	Clarksville, Va.	135.80	124.32	11.48
Lumber City, Ga.	724.66	640.90	83.76	82	4817	4508 9/9/34	New Brighton, Minn.	Brown Summit, N.C.	264.04	245.40	18.64
Ninety Six, S.C.	1,278.83	1,080.88	197.95	83	4818	4511 9/11/34	New Brighton, Minn.	Bonaja, N.C.	281.60	261.14	20.46
Asheville, N.C.	532.07	453.56	78.51	84	4819	4510 9/11/34	New Brighton, Minn.	Bonaja, N.C.	290.55	269.36	21.19
Asheville, N.C.	295.31	266.76	26.55	85	4855	3319 6/16/34	So.St.Paul. Minn.	Clyde, N.C.	1,579.53	1,473.14	106.39
Clyde, N.C.	527.15	450.21	76.94	86	4856	3470 6/24/34	So.St.Paul. Minn.	Clyde, N.C.	364.51	339.96	24.55
Asheville, N.C.	532.18	494.35	37.83	87	4857	3713 6/27/34	New Brighton, Minn.	Haynes, S.C.	1,116.77	958.81	157.96
Asheville, N.C.	2,341.05	2,140.42	200.63	88	4858	1772 6/6/34	Sioux City, Iowa	Greenwood, S.C.	674.39	576.02	98.37
Clayton, N.C.	263.30	242.74	20.56	89	4861	3155 6/16/34	Sioux City, Iowa	Rockton, S.C.	683.40	595.18	88.22
Clayton, N.C.	263.30	237.16	26.14	90	4876	3322 6/16/34	So.St.Paul. Minn.	Sylva, N.C.	1,111.52	1,036.95	74.57
Newton, N.C.	772.89	717.39	55.50	91	4877	4566 9/11/34	New Brighton, Minn.	Davidson River, N.C.	123.80	114.86	8.94
Asheville, N.C.	318.60	273.34	45.26	92	4878	767 7/23/34	New Brighton, Minn.	Spartanburg, S.C.	275.92	236.60	39.32
Asheville, N.C.	424.80	383.15	41.65	93	4880	1024 7/26/34	So.St.Paul. Minn.	Spartanburg, S.C.	622.51	537.46	85.05
Asheville, N.C.	544.90	431.24	113.66	94	4882	1162 6/3/34	So.St.Paul. Minn.	Hayne, S.C.	753.01	644.95	108.06
Asheville, N.C.	941.20	863.71	77.49	95	4883	785 7/23/34	New Brighton, Minn.	Hayne, S.C.	125.18	112.20	12.98
Asheville, N.C.	705.90	647.78	58.12	96	4884	3375 6/20/34	New Brighton, Minn.	Hayne, S.C.	1,832.13	1,563.64	248.49
Davidson Riv., N.C.	2,186.65	1,692.63	294.02	97	4885	784 7/13/34	New Brighton, Minn.	Hayne, S.C.	414.04	356.07	57.97
Clyde, N.C.	1,274.40	1,077.78	196.62	98	4886	766 7/23/34	New Brighton, Minn.	Spartanburg, S.C.	130.88	116.83	14.05
Lumber City, Ga.	672.96	604.82	68.16	99	4887	3164 6/20/34	Milwaukee, Wis.	Spartanburg, S.C.	1,673.44	1,325.31	348.13
Sylva, N.C.	666.00	792.72	74.08	100	4889	3733 6/24/34	New Brighton, Minn.	Columbia, S.C.	466.65	406.06	60.59
Columbia, S.C.	777.01	676.31	96.70	101	4890	4525 9/10/34	So.St.Paul. Minn.	Cochran, Ga.	518.65	517.49	1.16
Columbia, S.C.	259.00	226.10	32.90	102	4891	4537 9/10/34	So.St.Paul. Minn.	Westlake, Ga.	518.65	515.33	3.32
Columbia, S.C.	259.00	226.10	32.90	103	4894	4544 9/13/34	So.St.Paul. Minn.	Towaliga, Ga.	407.14	396.29	10.85
Waynesville, N.C.	196.65	175.63	20.82	104	4895	1319 7/31/34	So.St.Paul. Minn.	Flat Rock, Ga.	197.42	191.47	5.95
Marshall, N.C.	525.63	443.38	82.25	105	5212	4131 9/4/34	New Brighton, Minn.	Clayton, N.C.	824.11	746.71	77.40
Princeton, N.C.	263.30	243.38	19.92	106	5213	3467 6/21/34	So.St.Paul. Minn.	Bryson, N.C.	996.01	929.27	66.74
Chappell, S.C.	647.51	562.41	85.10	107	5226	3354 6/23/34	So.St.Paul. Minn.	Statesville, N.C.	614.01	570.13	43.88
York, S.C.	763.95	629.30	154.65	108	5229	3351 6/23/34	So.St.Paul. Minn.	Statesville, N.C.	307.00	290.59	16.41
Clayton, N.C.	363.75	306.47	57.28	109	5230	337 6/22/34	So.St.Paul. Minn.	Statesville, N.C.	419.00	404.70	14.30
Princeton, N.C.	394.95	365.06	29.89	110	5231	1046 8/31/34	So.St.Paul. Minn.	Statesville, N.C.	127.50	118.74	8.76
York, S.C.	892.52	776.84	115.68	111	5232	1065 6/31/34	So.St.Paul. Minn.	Statesville, N.C.	127.50	116.87	8.63
York, S.C.	1,920.49	1,542.51	377.98	112	5549	4719 9/15/34	New Brighton, Minn.	Graham, N.C.	132.80	121.02	11.78
York, S.C.	1,664.79	1,524.23	340.56	113	5550	3347 9/1/34	So.St.Paul. Minn.	Winston-Salem, N.C.	518.00	471.45	46.55
York, S.C.	635.56	669.93	165.63	114	5551	3553 6/25/34	New Brighton, Minn.	Winston-Salem, N.C.	277.63	251.47	26.16
University, N.C.	266.50	265.49	21.01	115	5552	4568 9/10/34	New Brighton, Minn.	Asheville, N.C.	935.67	847.24	88.43
Wilson Mills, N.C.	266.40	246.11	20.29	116	5553	4591 9/15/34	New Brighton, Minn.	Asheville, N.C.	267.98	248.35	19.63
Princeton, N.C.	658.25	594.17	64.08	117	5554	3469 6/21/34	So.St.Paul. Minn.	Clyde, N.C.	245.00	221.40	23.60
Asheville, N.C.	1,244.65	1,082.25	162.40	118	5555	516 7/20/34	E.St.Louis, Ill.	Balean, N.C.	186.50	161.36	25.14
Goldsboro, N.C.	104.55	95.02	9.53	119	5556	115 7/17/34	So.St.Paul. Minn.	St.Matthews, S.C.	838.92	731.00	107.92
Union, S.C.	126.96	110.11	16.85	120	5706	3194 6/14/34	So.St.Paul. Minn.	Boydtown, Va.	948.51	889.10	59.41
Union, S.C.	126.96	110.11	16.85	121	5836	3321 6/18/34	So.St.Paul. Minn.	Kurphy, N.C.	1,066.52	981.62	84.90
Union, S.C.	885.52	767.54	117.98	122	5896	3560 6/25/34	New Brighton, Minn.	Oconeechee, N.C.	1,635.66	1,326.22	309.64
Union, S.C.	379.51	326.95	50.56	123	5897	3737 6/29/34	New Brighton, Minn.	Hillsboro, N.C.	172.54	160.02	12.52
Union, S.C.	309.72	267.06	42.64	124	5898	3576 6/22/34	New Brighton, Minn.	Hillsboro, N.C.	170.61	156.24	12.37
Newberry, S.C.	368.51	338.49	50.02	125	5900	1645 6/31/34	So.St.Paul. Minn.	Asheville, N.C.	243.00	212.96	30.04
Rockton, S.C.	652.51	561.86	70.65	126	5966	127 7/20/34	Sioux City, Iowa	Ridgeway, S.C.	609.09	597.19	11.90
Ridgeway, S.C.	1,044.02	915.22	128.80	127	6093	126 7/20/34	Sioux City, Iowa	Woodward, S.C.	551.43	474.31	77.12
Johnston, S.C.	251.30	218.15	33.15	128	6094	996 7/27/34	So.St.Paul. Minn.	Johnston, S.C.	259.00	225.69	33.31
Jedburg, S.C.	305.95	338.69	47.26	129	6216	4590 9/10/34	New Brighton, Minn.	Bryson, N.C.	424.57	394.03	30.54
Shoals, Tenn.	227.20	209.10	18.10	130	6259	3350 6/23/34	So.St.Paul. Minn.	Taylorville, N.C.	255.00	232.23	22.77
Broadmax, Va.	148.81	135.60	13.21	131	6260	3474 6/21/34	So.St.Paul. Minn.	Stovall, N.C.	140.00	126.76	13.24
Goldsboro, N.C.	1,052.52	953.14	99.38	132	6261	3471 6/21/34	So.St.Paul. Minn.	Hillsboro, N.C.	265.00	242.04	22.96
Asheville, N.C.	610.50	480.91	129.59	133	6262	3472 6/21/34	So.St.Paul. Minn.	Hillsboro, N.C.	132.50	128.02	4.48
Asheville, N.C.	1,093.52	956.41	135.11	134	6263	3556 6/25/34	New Brighton, Minn.	Mocksville, N.C.	835.49	772.07	63.42
Piagah Forest, N.C.	2,223.03	2,067.74	155.29	135	6264	1047 6/30/34	So.St.Paul. Minn.	Newton, N.C.	126.50	118.72	7.78
Piagah Forest, N.C.	2,111.76	1,638.06	273.72	136	6265	1046 6/30/34	So.St.Paul. Minn.	Newton, N.C.	126.50	118.72	7.78
Taylorville, N.C.	127.50	118.75	8.75	137	6275	4155 9/4/34	So.St.Paul. Minn.	Lancaster, S.C.	388.51	339.66	48.85
Taylorville, N.C.	362.51	356.28	26.23	138	6464	3466 8/24/34	So.St.Paul. Minn.	Baleson, N.C.	247.00	218.60	28.20
Fernersville, N.C.	130.60	121.82	8.98	139	6467	127 7/20/34	Sioux City, Iowa	Wianasboro, S.C.	274.83	239.24	35.59
Rural Hall, N.C.	130.60	121.84	8.96	140	6799	1045 6/31/34	So.St.Paul. Minn.	Kewton, N.C.	126.50	117.80	8.70
Newton, N.C.	379.51	376.48	3.03	141	6800	4591 9/15/34	New Brighton, Minn.	Topton, N.C.	677.77	578.87	98.90
Asheville, N.C.	1,600.40	1,463.96	116.44	142	6801	4591 9/15/34	New Brighton, Minn.	Murphy, N.C.	252.55		

ADMINISTRATIVE DIRECTIONS

1. Government property will be transported on the prescribed form of Government bill of lading (original, memorandum, and shipping order), which will be identified by serial numbers.
2. Through bills of lading will be issued in all instances between initial and ultimate points, except when rates more advantageous to the Government may be otherwise secured.
3. When shipments are made under contract or special rates, notation of such fact should appear on the face of bills of lading.
4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the Government by the use of such lines, or lines equalizing rates therewith.
5. Public property may be delivered by any Government officer or agent to the Quartermaster Corps, U. S. Army, which will ship the same under its regulations. (38 Stat. 111.)
6. Bills of lading must describe shipments of articles by their commercial names, giving separately such weights, dimensions, and manner of packing as may be necessary to ascertain classifications and rates and to enable recovery in case of loss or damage.
7. If the number of articles to be shipped be too great for the blank form (original, memorandum, and shipping order), extra sheets of the prescribed form should be used, and so stitched and designated as to form but one bill of lading, under one number.
8. A voucher when submitted for settlement shall cover charges to one office or service only. The name of the office is inserted at the top of the bill of lading. Correspondence regarding transportation accounts shall be addressed to the particular office or service and references made to the serial numbers of the Government bills of lading included in the company's bill.

REPORT OF LOSS, DAMAGE, OR SHRINKAGE

Notice is hereby given the carrier to whom this bill of lading is surrendered that the shipment was received in condition shown below and that claim is made for the value of such loss, damage, or shrinkage, as indicated:

Explanation regarding loss, damage, or shrinkage to be made by consignee, who will state all the facts available concerning the nature or extent of the loss, damage, or shrinkage, and how it occurred.

The within shipment was received with the following loss, damage, or shrinkage:

Description: _____

Weight of such articles pounds.

Invoice value or cost of repairs, \$.....

I certify that the facts noted above are correct.

Consignee.

By _____

Title _____

GENERAL CONDITIONS AND INSTRUCTIONS

CONDITIONS

It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated.
2. Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.
3. Shipment made upon this bill of lading shall take no higher rate than would be charged had the shipment been made upon the uniform straight bill of lading or uniform express receipt.
4. No charge shall be made by any carrier for the execution and presentation of bills of lading in manner and form as provided by the instructions hereon.
5. This shipment is made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face hereof.
6. Receipt of the shipment is made subject to the "Report of Loss, Damage, or Shrinkage" noted hereon.
7. In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given to the carriers or to period within which claim therefor shall be made or suit instituted.

INSTRUCTIONS

1. Erasures, interlineations, or alterations in bills of lading must be authenticated and explained by the person making them.
2. Shipping order, original bill of lading, and memorandum bill of lading should be used in making a shipment. Only one original bill of lading will be issued for a single shipment. The shipping order should be furnished the initial carrier. The original bill of lading and memorandum copies should be signed by the agent of the receiving carrier, returned to the consignor, and the original promptly mailed to the consignee. The consignee on receipt of the shipment will sign the consignee certificate on the original bill of lading and surrender the bill of lading to the last carrier. The bill of lading then becomes the evidence upon which settlement for the service will be made. Memorandum copies of bills of lading may be used as administrative officers direct.
3. In the absence of the consignee, or on his failure to receipt, the person receiving will certify that he is duly authorized to do so, reciting such authority.
4. In no case will a second bill of lading be issued for a shipment, nor will a bill of lading be issued after the transportation has been performed. In case the bill of lading has been lost or destroyed, the carrier shall be furnished by the consignee with a "Certificate in Lieu of Lost Bill of Lading," on the standard form prescribed therefor which, when finally consummated, acknowledgment of the "Certificate and Waiver by Transportation Company," shall accompany the bill for services submitted by the carrier to the officer charged with the settlement of the account. Should the original bill of lading be located after settlement has been made on the certificate, it will be forwarded to the administrative office of the department concerned for transmittal to the General Accounting Office.
5. To insure prompt delivery of property, in the absence of the bill of lading, the consignee should give to the carrier a "Temporary Receipt," executed on the prescribed form, for the property actually delivered. On the recovery of the bill of lading, or when the certificate provided for above shall have been given, a statement will be indorsed on said bill of lading or certificate of the fact of the delivery as per said temporary receipt, and the said temporary receipt will be indorsed with reference to the bill of lading or certificate sufficient to identify the same, and both papers attached and forwarded with the claim for payment thereon.
6. In case of loss or damage to property while in the possession of the carrier, such loss or damage shall, when practicable, be noted on the bill of lading or certificate in lieu thereof, as the case may be, before its accomplishment. All practicable steps shall be taken at that time to determine the loss or damage and the liability therefor, and to collect and transmit to the proper officer, without delay, all evidence as to the same. Should the loss or damage not be discovered until after the bill of lading or certificate has been accomplished, the proper officer shall be notified as soon as the loss or damage is discovered, and the agent of the carrier advised immediately of such loss or damage, extending privilege of examination of shipment.
7. Bills must be submitted by the general officers of carriers, and on forms furnished by the Government, to be obtained from the Public Printer, Washington, D. C.

[fols. 35-36]

EXHIBIT NO. 9 TO PETITION
Statement of amount due by United States Government covering deductions or disallowances
made in the settlement of freight charges on various shipments listed below

Item	Bill	Bill of Lading	Origin	Destination	Charged	Paid	Balance
1	F-4226	509004	5/27/35 Norwood, Ohio	Newberry, S. C.	\$9.60	\$8.58	\$1.08
2	4344	5556620	5/28/35 Cookville, Tenn.	Raleigh, N. C.	36.19	32.47	3.72
3	8203	660093	11/22/35 Norwood, Ohio	Oxford, N. C.	8.98	8.34	0.64
4	9446	1312004	11/23/35 Wayland, N. Y.	Athens, Ga.	9.45	8.65	0.80
5	734	1300920	1/31/36 Springfield, Ohio	Gainesville, Ga.	542.54	404.56	137.98
6	.615	1414680	2/21/36 Washington, D. C.	Athens, Ga.	4.65	4.12	0.53
7	3605	1290140	4/28/36 Norwood, Ohio	Asheville, N. C.	18.67	17.21	1.46
				Totals	\$630.14	\$483.93	\$146.21
				U. S. Department of Commerce			
8	8211	171900	11/20/35 Charleston, S. C.	Atlanta, Ga.	1.00	0.74	0.26
9	8211	171894	11/1/35 Charleston, S. C.	Atlanta, Ga.	31.69	21.40	10.29
10	8211	165501	11/4/35 Charleston, S. C.	Atlanta, Ga.	1.28	0.88	0.40
				Totals	\$34.96	\$23.02	\$11.94
				Finance Office, U. S. War Department			
11	332	882830	12/29/34 Jeffersonville, Ind.	Bryson, N. C.	79.12	77.68	1.44
12	2816	1006581	4/17/35 Ft. Oglethorpe, Ga.	Corinth, Miss.	95.16	86.06	9.10
13	4189	1006693	6/17/35 Ft. Oglethorpe, Ga.	Corinth, Miss.	81.34	73.42	7.92
14	4190	1006673	6/7/35 Ft. Oglethorpe, Ga.	Corinth, Miss.	68.41	62.67	5.74
15	4191	1006663	6/1/35 Jeffersonville, Ind.	Clinchport, Va.	135.71	122.61	13.10
16	4738	1128434	7/20/35 New Cumberland, Pa.	Big Stone Gap, Va.	2.65	1.29	1.36
17	4923	1195286	7/12/35 New Cumberland, Pa.	Big Stone Gap, Va.	1.58	1.34	0.24
18	4923	1195192	7/11/35 Johnstown, Pa.	Big Stone Gap, Va.	46.39	39.11	7.28
19	4923	693632	7/11/35 Jeffersonville, Ind.	Big Stone Gap, Va.	5.20	4.13	1.07
20	2235	1213010	3/28/36 Kansas City, Mo.	Columbia, S. C.	12.70	11.09	1.61
21	4767	1340779	5/22/36 Kansas City, Mo.	Pt. McClellan, Ala.	226.90	205.60	21.30
22	4908	1340780	6/12/36 Kansas City, Mo.	Pt. McClellan, Ala.	226.90	205.60	21.30
				Totals	\$892.06	\$890.60	\$91.46

Totals

Totals

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EXHIBIT NO. 9 TO PETITION—Continued

[fols. 37-38] II. GENERAL TRAVERSE—Filed August 24, 1940

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

(Sgd.) Francis M. Shead, Assistant Attorney General.

LRM.

III. ARGUMENT AND SUBMISSION OF CASE

On June 7, 1943, the argument of case on merits was begun for plaintiff by Mr. Seddon G. Boxley.

On June 8, 1943, the argument of the case was concluded and case submitted on merits. Argued by Mr. Seddon G. Boxley for plaintiff, and by Assistant Attorney General Francis M. Shea for defendant.

[fol. 39] IV. Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.—Filed October 4, 1943.

Mr. Seddon G. Boxley for the plaintiff. *Mr. S. R. Prince* was on the brief.

Mr. Assistant Attorney General Francis M. Shea for the defendant. *Messrs. Louis R. Mehlinger and Charles L. Brodman* were on the brief.

Plaintiff asks judgment for \$10,898.26 as the balance alleged to be due from defendant as freight charges for the transportation of various shipments of Government property. Defendant asserts a counterclaim in the net amount of \$1,251.73 for certain alleged overpayments of the freight due. The question presented involves the interpretation of paragraph 1 of the Freight Land-grant Equalization Agreement entered into by the parties November 29, 1933, as authorized by section 22 of the Interstate Commerce Act of February 4, 1887 (24 Stat. 379, 387; 49 U. S. Code, See. 22), under which agreement the Government was given reduced freight rates on shipments of Government property.

SPECIAL FINDINGS OF FACT

1. The plaintiff, a Virginia corporation, now is and was during all the times hereinafter mentioned a common carrier of freight and passengers in interstate and intrastate

commerce. It was the last or delivering carrier of all shipments hereinafter mentioned and as such is entitled to collect all freight charges.

[fol. 40] All the transportation herein involved was completed within the statutory time for bringing suit, and none of the items are barred by the statute of limitations.

2. November 29, 1933, plaintiff and defendant entered into an agreement entitled "Freight Land-grant Equalization Agreement," a copy of which is marked "Plaintiff's Exhibit I" as a part of stipulation of facts herein. Therein plaintiff agreed (paragraph No. 1):

To accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

This acceptance was made subject to the following condition:

2. (a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with the Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of "Exceptions" in paragraph 3 below [exceptions not here in controversy].

The agreement was in full force and effect on the dates of transportation of all shipments embraced in this proceeding. The copy thereof referred to is made part of these findings by reference.

3. The purpose and effect of the freight equalization agreements of the defendant with plaintiff and with other common carriers was to equalize rates on Government property over various routes serving the same point of origin and destination, where one or more of those routes had been aided in whole or in part by grant of public lands; rates over

all routes from point of origin to destination being brought down to the level of that over the route producing the lowest net rate on account of land-grant deduction.

This arrangement was designed to give the equalizing carrier a portion of the Government business that was possible [fol. 41] of routing over the governing land-grant route, and to give the Government a greater range in choice of routes where considerations of economy entered into the selection.

All of the gross freight charges herein employed by one party or the other are, except as may hereinafter specifically appear, correctly derived either, on the one hand, from lawful rates on interstate traffic filed with the Interstate Commerce Commission, or, on the other, from undisputed intrastate rates, all filed with the Interstate Commerce Commission, and all applying from point of origin to destination at time of movement, in each instance over the route made use of for calculating net rates, if any, derived through deductions on account of land-grant distance.

All net charges respectively resulting from land-grant distance have been correctly computed herein for the several routes employed by either party, except as may hereinafter specifically appear.

Intrastate traffic is confined in this suit to the following items (not including those abandoned) listed in Exhibit No. 8 to the petition:

Item:	Amount	Item:	Amount	Item:	Amount
164.....	\$13.42	218.....	\$ 2.99	224.....	\$18.19
168.....	38	219.....	1.28	225.....	103.45
169.....	37	220.....	33.51	226.....	10.91
215.....	26.14	221.....	18.22	227.....	33.15
216.....	22.81	222.....	33.90		
217.....	28.89	223.....	17.94		
Total.....					365.55

There is no dispute between the parties as to application of freight tariffs. The dispute herein is as to whether the available routes constructed from lawful tariffs and used by the defendant in calculating freight charges for purposes of payment are, irrespective of the tariffs, available for such use under the general freight land-grant equalization agreement. The parties herein stipulate that "If the Court should find that in the first and second causes of action defendant has not computed the charges in accordance with the tariffs and land-grant equalization agreement hereinbefore cited,

EXHIBIT NO. 8 TO PETITION

Statement of amounts due by Tennessee Valley Authority, covering deductions or disallowances made in the settlement of freight charges on various shipments listed below.

Item	Bill No.	Lading	Origin	Destination	Charges	Paid	Balance	Item	Bill No.	Lading	Origin
1	5486 3403	8/13/34	Ludington, Mich.	Town Creek, Ala.	\$15.79	\$14.45	\$1.34	115	F-4071	9316	5/29/35
2	5486 3230	7/24/34	"	"	1.39	1.26	.13	116	4087	8375	5/21/35
3	5486 3087	8/14/34	Salem, Ohio	"	61.44	53.72	7.72	117	4088	8371	5/25/35
4	5486 2938	8/1/34	Oakmont, Pa.	"	75.90	67.28	8.62	118	4153	9301	5/24/35
5	5486 3075	8/1/34	Chicago, Ill.	"	27.14	24.08	3.06	119	4153	8435	5/18/35
6	5486 3278	7/31/34	Pittsburg, Pa.	"	26.35	23.58	2.77	120	4159	7547	5/24/35
7	5486 2512	8/17/34	Clinton, Tenn.	"	1.19	1.10	.09	121	4980	10455	7/22/35
8	5486 2511	8/14/34	"	"	83.98	77.41	6.57	122	4980	10442	7/20/35
9	5486 2507	8/3/34	"	"	10.56	9.73	.83	123	4980	9503	7/26/35
10	5486 3200	8/7/34	Greenfield, Mass.	"	47.54	43.44	4.10	124	4980	9494	7/24/35
11	5486 1411	8/18/34	Washington, D.C.	"	8.20	7.17	1.03	125	4980	9489	7/23/35
12	569 5463	1/12/35	Sheffield, Ala.	Corinth, Miss.	54.50	35.24	19.26	126	4980	9506	7/26/35
13	738 2257	1/17/35	Birmingham, Ala.	Town Creek, Ala.	50.46	47.98	2.48	127	5144	9473	7/15/35
14	1339 5556	2/14/35	Sheffield, Ala.	Corinth, Miss.	27.12	17.49	9.63	128	5144	9432	7/8/35
15	1339 5542	2/9/35	"	"	3.16	2.03	1.13	129	5144	10338	7/10/35
16	1339 5544	2/8/35	Clinton, Tenn.	"	4.17	3.65	.52	130	5739	7435	7/31/35
17	1339 5663	2/12/35	"	"	74.44	65.33	9.11	131	5739	7434	7/29/35
18	2128 5665	2/27/35	"	"	27.61	23.15	4.46	132	5739	7432	7/26/35
19	2164 2549	3/7/35	"	"	38.71	37.20	1.51	133	5934	9572	8/8/35
20	2164 5608	3/5/35	Sheffield, Ala.	"	3.70	2.67	1.03	134	5934	9602	8/17/35
21	2164 5603	3/4/35	"	"	24.17	15.30	8.87	135	5934	9604	8/17/35
22	2164 5668	3/2/35	Clinton, Tenn.	"	20.19	15.51	4.68	136	5934	9617	8/21/35
23	2164 2547	3/2/35	"	"	19.42	14.87	4.55	137	5934	9622	8/23/35
24	2164 5669	3/2/35	"	"	4.69	3.55	1.14	138	5934	10339	8/26/35
25	2165 6514	3/7/35	Coal Creek, Tenn.	"	213.52	167.48	46.04	139	7866	11937	11/7/35
26	2166 5623	3/5/35	Sheffield, Ala.	"	40.15	25.89	14.26	140	7866	12077	11/12/35
27	2167 5670	3/8/35	Clinton, Tenn.	"	98.32	84.68	13.64	141	7928	8131	10/25/35
28	2177 5671	3/15/35	"	"	1.17	.99	.18	142	728	8133	10/30/35
29	2177 5627	3/13/35	Sheffield, Ala.	"	6.25	4.09	2.26	143	7928	11846	10/24/35
30	2177 5641	3/18/35	"	"	1.97	1.27	.70	144	7928	12014	10/23/35
31	2233 5686	4/3/35	Clinton, Tenn.	"	30.04	25.26	4.76	145	7928	12026	10/25/35
32	2233 5685	4/3/35	"	"	125.77	107.01	18.76	146	7928	12032	10/28/35
33	2233 5688	4/5/35	"	"	33.54	28.14	5.40	147	7928	12038	10/30/35
34	2233 6837	4/4/35	Sheffield, Ala.	"	2.01	1.29	.72	148	7928	12044	11/1/35
35	2233 6845	4/5/35	"	"	2.58	1.67	.91	149	7928	12048	11/1/35
36	2233 6834	4/3/35	"	"	3.76	2.43	1.33	150	7928	12050	11/4/35
37	2233 6856	4/10/35	"	"	4.76	3.07	1.69	151	7928	12061	11/5/35
38	2233 5676	4/4/35	Clinton, Tenn.	"	9.50	8.10	1.40	152	7928	12065	11/6/35
39	2312 6825	3/29/35	Sheffield, Ala.	Town Creek, Ala.	41.94	27.04	14.90	153	8122	12070	11/8/35
40	2313 6826	4/1/35	"	"	29.97	19.32	10.65	154	8122	12677	11/14/35
41	2313 6819	3/26/35	"	"	2.99	1.93	1.06	155	8122	11897	10/31/35
42	2313 5680	3/29/35	Clinton, Tenn.	"	1.04	0.87	0.17	156	8122	12665	11/11/35
43	2313 5683	3/29/35	"	"	16.24	14.06	2.18	157	8122	12658	11/11/35
44	2313 5676	3/22/35	"	"	2.57	2.14	0.43	158	8124	11986	11/11/35
45	2313 5675	3/21/35	"	"	4.76	3.52	1.24	159	8126	12075	11/11/35
46	2313 6812	3/26/35	Sheffield, Ala.	"	8.06	5.20	2.86	160	8127	1105	11/25/35
47	2332 6194	3/26/35	Bessemer, Ala.	Town Creek, Ala.	26.18	24.08	2.10	161	8139	11166	11/1/35
48	2617 6681	3/26/35	Savannah, Ga.	Clinton, Tenn.	17.99	16.58	1.41	162	8141	11952	11/11/35
49	2754 5691	4/17/35	Clinton, Tenn.	Corinth, Miss.	2.95	2.52	0.43	163	8832	11956	11/2/35
50	2754 5699	4/20/35	"	"	4.45	3.80	0.65	164	9165	12190	12/19/35
51	2754 5696	4/20/35	"	"	54.66	46.79	7.87	165	9219	11922	12/24/35
52	2754 5696	4/20/35	"	"	2.85	2.40	0.45	166	9225	12110	11/29/35
53	2754 7401	4/22/35	Clinton, Tenn.	"	3.52	2.98	.54	167	9225	12103	11/27/35
54	2754 6889	4/19/35	Sheffield, Ala.	"	9.20	5.84	3.36	168	9253	12205	12/24/35
55	2754 6863	4/11/35	"	"	6.40	4.08	2.32	169	9254	12197	12/21/35
56	2754 7450	4/23/35	"	"	7.40	4.70	2.70	170	9260	12148	12/11/35
57	2754 7455	4/24/35	"	"	1.84	1.19	.65	171	9260	8185	12/9/35
58	2754 6892	4/19/35	"	"	1.91	1.71	.70	172	9449	12193	12/20/35
59	2755 6890	4/19/35	"	"	9.24	5.51	3.73	173	9449	12147	12/7/35
60	2812 5691	4/13/35	Clinton, Tenn.	"	.82	.72	.10	174	925	8252	1/7/36
61	2812 7227	4/13/35	Coal Creek, Tenn.	"	.97	.84	.13	175	10036	12240	1/21/36
62	2812										

EXHIBIT No. 8 TO PETITION

Statement of amounts due by Tennessee Valley Authority, covering deductions or disallowances made in the settlement of freight charges on various shipments listed below.

Destination	Charges	Paid	Balance	Item	Bill	Lading	Origin	Destination	Charges	Paid	Balance
Town Creek, Ala.	415.79	314.45	81.34	115	4077	9316	5/29/35	Sheffield, Ala.	83.09	\$1.99	\$1.10
"	1.39	1.26	.13	116	4087	8375	5/21/35	Tuscaloosa, Wash.	957.18	926.03	31.15
"	61.44	53.72	7.72	117	4088	8371	5/25/35	"	661.60	640.13	21.47
"	75.90	67.26	8.62	118	4153	9301	5/24/35	Sheffield, Ala.	6.18	3.78	2.40
"	27.14	24.08	3.06	119	4153	8435	5/18/35	Knoxville, Tenn.	4.97	4.31	.66
"	26.35	23.58	2.77	120	4159	7547	5/24/35	Corinth, Miss.	5.53	4.78	.75
"	1.19	1.10	.09	121	4980	10455	7/22/35	Coal Creek, Tenn.	1.74	1.50	.24
"	83.98	77.41	6.57	122	4980	10442	7/20/35	Knoxville, Tenn.	2.37	1.52	.85
"	10.56	9.73	.83	123	4980	9503	7/26/35	Sheffield, Ala.	6.09	3.91	2.18
"	47.54	43.44	4.10	124	4980	9494	7/24/35	"	4.28	2.76	1.52
"	8.20	7.17	1.03	125	4980	9489	7/23/35	"	3.47	2.24	1.23
Corinth, Miss.	54.50	35.24	19.26	126	4980	9506	7/26/35	"	3.51	2.26	1.25
Town Creek, Ala.	50.46	47.98	2.48	127	5144	9473	7/15/35	"	1.30	.84	.46
Corinth, Miss.	27.12	17.49	9.63	128	5144	9432	7/8/35	"	6.02	5.24	.78
"	3.16	2.03	1.13	129	5144	10338	7/10/35	Knoxville, Tenn.	1.55	1.30	.25
"	4.17	3.65	.52	130	5739	7435	7/31/35	Clinton, Tenn.	1.13	.98	.15
"	74.44	65.33	9.11	131	5739	7434	7/29/35	"	25.99	22.25	3.74
"	27.61	23.15	4.46	132	5739	7432	7/26/35	Sheffield, Ala.	1.56	1.01	.55
"	38.71	37.20	1.51	133	5934	9572	8/8/35	"	1.52	.98	.54
"	3.70	2.67	1.03	134	5934	9602	8/17/35	"	2.90	1.87	1.03
"	24.17	15.30	8.87	135	5934	9604	8/17/35	"	4.13	2.66	1.47
"	20.19	15.51	4.68	136	5934	9617	8/21/35	"	1.50	.97	.53
"	19.42	14.87	4.55	137	5934	9622	8/23/35	Coal Creek, Tenn.	23.62	20.42	3.20
"	4.69	3.55	1.14	138	5934	10339	8/26/35	"	28.93	25.04	3.89
"	213.52	167.48	46.04	139	7866	11937	11/7/35	Sheffield, Ala.	1.25	.81	.44
"	40.15	25.89	14.26	140	7866	12077	11/12/35	Courtland, Ala.	7.02	4.25	2.77
"	98.32	84.68	13.64	141	7928	8131	10/25/35	Athens, Ala.	15.47	8.33	7.14
"	1.17	.99	.18	142	7928	8133	10/30/35	Coal Creek, Tenn.	13.24	11.45	1.79
"	6.35	4.09	2.26	143	7928	11846	10/24/35	Sheffield, Ala.	.50	.31	.19
"	1.97	1.27	.70	144	7928	12014	10/23/35	Courtland, Ala.	4.64	3.01	1.63
"	30.04	25.26	4.76	145	7928	12026	10/25/35	Sheffield, Ala.	1.15	.73	.42
"	125.77	107.01	18.76	146	7928	12032	10/28/35	"	7.19	4.64	2.55
"	33.54	28.14	5.40	147	7928	12038	10/30/35	Wheeler, Ala.	.93	.56	.37
"	2.01	1.29	.72	148	7928	12044	11/1/35	Sheffield, Ala.	6.23	4.02	2.21
"	2.58	1.67	.91	149	7928	12048	11/1/35	"	4.95	3.18	1.77
"	3.76	2.43	1.33	150	7928	12050	11/4/35	"	.81	.52	.29
"	4.76	3.07	1.69	151	7928	12061	11/5/35	"	1.60	1.05	.55
"	9.50	8.10	1.40	152	7928	12065	11/6/35	"	.79	.51	.28
"	41.94	27.04	14.90	153	8122	12070	11/8/35	Coal Creek, Tenn.	2.23	1.93	.30
"	29.97	19.32	10.65	154	8122	12677	11/14/35	Sheffield, Ala.	.57	.49	.08
"	2.99	1.93	1.06	155	8122	11897	10/31/35	Knoxville, Tenn.	2.53	2.19	.34
"	1.04	0.87	0.17	156	8122	12665	11/11/35	Coal Creek, Tenn.	30.64	26.52	4.12
"	16.24	14.06	2.18	157	8122	12658	11/11/35	Corinth, Miss.	99.69	86.25	13.44
"	2.57	2.14	0.43	158	8122	12658	11/11/35	Sheffield, Ala.	45.82	29.55	16.27
"	4.76	3.52	1.24	159	8126	12075	11/11/35	Huntsville, Ala.	1.91	1.60	.31
"	8.06	5.20	2.86	160	8127	1105	11/25/35	Sheffield, Ala.	535.81	509.90	25.91
"	2.85	2.40	.45	161	8139	11166	11/1/35	"	230.35	155.31	75.04
"	3.52	2.98	.54	162	8141	11952	11/11/35	Sheffield, Ala.	189.00	128.42	61.58
"	9.20	5.84	3.36	163	8253	12205	12/24/35	Cincinnati, Ohio	58.34	44.92	13.42
"	6.40	4.08	2.32	164	8254	12197	12/21/35	Corinth, Miss.	68.66	61.23	7.43
"	7.40	4.70	2.70	165	8260	12148	12/11/35	Sheffield, Ala.	10.63	7.21	3.42
"	1.84	1.19	.65	171	8260	8185	12/9/35	Decatur, Ala.	1.66	1.28	.38
"	1.91	1.21	.70	172	9449	12193	12/20/35	Corinth, Miss.	1.62	1.25	.37
"	9.24	5.51	3.73	173	9449	12147	12/7/35	Sheffield, Ala.	1.65	.99	.66
"	.82	.72	.10	174	9449	8252	1/7/36	Sheffield, Ala.	6.32	3.77	2.55
"	.97	.84	.13	175	10036	12240	1/21/36	Corinth, Miss.	1.68	1.08	.60
"	30.96	26.40	4.56	176	10232	8270	1/17/36	Paint Rock, Ala.	2.10	1.36	.74
"	6.42	5.47	.95	177	10236	8267	1/13/36	Iuka, Miss.	10.34	6.26	4.08
"	2.68	1.66	1.02	178	10239	8260	1/11/36	Paint Rock, Ala.	96.30	60.43	35.87
"	31.08	19.68	11.40	179	10287	8293	1/18/36	Lone Mountain, Tenn.	105.77	94.17	11.60
Town Creek, Ala.	3.61	3.39	.25	180	10288	13335	1/13/36	Chattanooga, Tenn.	117.13	72.81	44.32
"	5.35	3.39	1.96	181	10292	8216	12/31/35	Paint Rock, Ala.	4.66	2.74	1.92
"	3.61	3.36	.25	181	10292	8216	12/31/35	Corinth, Miss.	124.61	107.80	16.81
"	.81	.74	.07	182	10293	8216	12/31/35	Sheffield, Ala.	2.43	1.47	.96
"	5.45	5.00	.45	183	10402	12289	1/6/36	Town Creek, Ala.	1.22	.79	.43
"	4.64	4.26	.38	184	10402	12291	1/6/36	Anniston, Ala.	360.95		

are proper. The defendant, in paying for the transportation and making the deduction of \$58.24, used a route as follows: Sheffield to Parrish via Northern Alabama Railway; Parrish to Birmingham via Southern Ry.; Louisville & Nashville R. R. beyond to destination. The Louisville & Nashville R. R. portion is land-aided. The through distance over the route so used is 222.4 miles, and this route is not used by commercial traffic.

17. The shipments covered by items Nos. 220, 221, 222, 223, 224, 227, a total difference in dispute of \$154.91, moved via the Southern Ry. from Decatur to Sheffield, Ala.

The circumstances here are the same as set forth in Finding No. 16, with directions reversed.

18. The shipments on items 86, 87, and 88 were from Chicago, Illinois, to Coal Creek, Tennessee. The aggregate [fol. 52] claimed thereon is \$87.98. The shipments actually moved by way of the Chicago, Burlington & Quincy R. R. to Paducah, Ky.; Nashville, Chattanooga & St. Louis Ry. to Nashville; Tennessee Central Ry. to Harriman; thence via Southern Railway to Coal Creek, a total distance of 875.2 miles.

In billing defendant the plaintiff offered net freight charges calculated by way of Cairo, Hopkinsville, Nashville, Lebanon, Harriman; the land-aided portion of which extended only from Chicago to Cairo on the Illinois Central R. R., a total distance from Chicago to Coal Creek of 760.7 miles. The defendant's deduction of \$87.98 from plaintiff's bill was calculated by using the Cairo gateway, as had the plaintiff. The route used beyond Cairo was different. Defendant used the Mobile & Ohio R. R., Cairo to Meridian, the Alabama Great Southern R. R. to Chattanooga, and the Southern Ry. thence to destination. The land-grant portion of the route so used extended from Chicago to Cairo, the Tennessee-Mississippi State Line to Meridian, and the Alabama-Mississippi State Line to the Alabama-Georgia State Line, a through distance from Chicago to Coal Creek of 1,172.05 miles.

The route made use of by defendant in its calculation is not employed in commercial traffic.

There were alternative routes beyond Cairo; not employed by either party, which would result in higher charges than contended for by defendant, and lower than claimed

and that said tariffs and agreement are silent on the matter of distance limitations, then there is no fixed basis upon which plaintiff and defendant can agree for the computation [fol. 42] of net charges in the absence of a determination by the Court of such mileage limitations as it may find to be proper within the contemplation of said tariffs and land-grant equalization agreement; but when said limitations, if any, are determined by the Court, charges in accordance therewith will be computed by the parties, and if in agreement, will be for stipulation as to the amount due the plaintiff or the defendant, as the case may be."

First Cause of Action

Federal Surplus Relief Corporation

(Exhibit No. 4 to the Petition)

4. In the summer months of the year 1934, the Federal Surplus Relief Corporation, as consignor and duly authorized agent of the United States, shipped over plaintiff's lines and its connections 147 shipments of livestock which are listed in Exhibit No. 4 to the petition, property of the United States, from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin, and Nebraska to points in North Carolina, South Carolina, Georgia, Tennessee, and Virginia. Each shipment was transported and delivered in accordance with what is known as "uniform livestock contracts." Upon delivery of the shipments at destinations, the uniform livestock contracts were surrendered to the delivering carrier together with stickers attached thereto reading in part as follows:

Property of the Federal Government.

Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in the same manner as if under a Government Bill of Lading.

5. For the transportation services so performed plaintiff submitted its bills on which it claimed freight charges totaling \$88,481.~~82~~ of which aggregate defendant paid plaintiff \$78,584.99, leaving a balance of \$9,896.90 unpaid. Plaintiff abandons claim on items Nos. 8, 25, 45, 56, 65, 66, 75, 76, 77, 97, 101, 102, 103, 104, 109, 114 and 144 of Exhibit No.

by plaintiff. Commercial shipments do not use the alternative routes. They are illustrated by plaintiff's Exhibit No. 44, which is made part hereof by reference, and not further particularized.

19. The shipment covered by item 177 of Exhibit No. 8 to the petition moved from Iuka, Miss., to Chattanooga, over plaintiff's line. There is claimed on this item \$44.32. The distance is 200.5 miles, without land-grant mileage, and the gross commercial charge was billed against defendant. In making payment defendant deducted \$44.32, using therefor a land-grant route as follows: Southern Ry. to Corinth (non-land-grant) 22.3 miles; Mobile & Ohio R. R. to Meridian (land-grant) 194.12 miles; Alabama Great Southern R. R. to Chattanooga (land-grant Alabama-Mississippi State Line to Alabama-Georgia State line) 298.9 miles, a total distance of 513.32 miles. The land-grant route, so constructed, is not used by commercial traffic.

[fol. 53] There are alternative routes from Iuka to Chattanooga involving land grants that would if used in the calculation result in lower charges than asserted by plaintiff and in higher charges than here computed by defendant. These alternative routes are indicated in plaintiff's Exhibit No. 40, which is made part hereof by reference. They are not routes used by commercial traffic, and are not further evidenced by particulars.

20. The shipments covered by items Nos. 175, 178, 187, 201, 202, 203, 213, and 214 in Exhibit No. 8 to the petition, moved from Corinth, Miss., to Paint Rock, Ala., over plaintiff's line, a non-land-grant route, a distance of 143.4 miles. The difference deducted and claimed aggregates \$71.61. Plaintiff billed at full commercial rates. Defendant applied a land-grant route for equalization purposes as follows: Corinth to Meridian via Mobile & Ohio R. R. (land-grant) 194.12 miles; Meridian to Chattanooga via Alabama Great Southern R. R. (land-grant Alabama-Mississippi State Line to Alabama-Georgia State Line) 298.8 miles; Chattanooga to Paint Rock via Southern Ry. (non-land-grant) 79.4 miles, a through distance of 572.32 miles.

No commercial shipments move by way of the route used by defendant.

There are alternative land-grant routes that would result in lower charges than claimed by plaintiff and higher than

4 to the petition, totaling \$384.68, leaving a balance of \$9,512.22 now claimed by it to be due and unpaid.

6. The through commercial charges from points of origin to destination on the shipments listed in Exhibit No. 4 to the petition, except those indicated therein as having originated at East St. Louis (National Stock Yards), Illinois, are computed by both parties by combining charges from point of origin to Cairo, Illinois, with charges therefrom to destination. The controversy as to the net charges so combined relates solely to the question whether equalization with land-grant routes south of Cairo requires any deductions from commercial, that is to say, full face tariff charges, and if so, to what extent.

Those shipments indicated in Exhibit No. 4 to the petition as having originated at East St. Louis (National Stock Yards), Illinois, moved to their respective destinations under through rates published as such, and as to the gross amount thereof there is no dispute. The correctness of the proportion of the respective through rates and the land-grant deductions therefrom applied by the defendant north of Cairo in the computation of the amounts paid plaintiff is likewise not disputed.

The applicable tariff did not impose any distance limitations upon the application of the commercial rates published therein, which rates were applicable also on like commercial shipments between Cairo and East St. Louis (National Stock Yards), Illinois, as points of origin, and the respective destinations listed in Exhibit 4 to the petition, via the land-aided routes used by defendant in computing the charges payable under the equalization agreement.

7. The net rates claimed by plaintiff, and the net rates used and claimed by defendant, were in neither case computed over the routes by way of which the shipments actually moved. The routes of actual movement were in each instance shorter in distance and time than the routes used in the net rate calculations.

The route now constructed and used for equalization purposes by plaintiff from Cairo is as follows:

Illinois Central R. R. to Martin, Tenn.; thence via Nashville, Chattanooga & St. Louis Ry. to Nashville, Tenn.; thence via Tennessee Central R. R. to Harriman, Tenn.; thence via plaintiff's line.

those paid by defendant. These alternative routes are not used by commercial traffic.

Plaintiff's Exhibit No. 46, made part hereof by reference, illustrates these alternative routes in yellow lines. They are not the subject of further particulars.

21. The shipments listed in items 75, 162, 163 of Exhibit No. 8 to the petition moved from Memphis, Tenn., to Sheffield, Ala., entirely over plaintiff's non-land-grant line, a distance of 147.2 miles. Plaintiff billed the Government at full commercial charges, from which the Government in payment deducted \$171.46 by way of land-grant equalization.

The shipment on item No. 75, \$34.84, consisted of wrought-iron pipe. For land-grant equalization purposes defendant used the following route: Memphis to Meridian via Mobile & Ohio R. R., 287.02 miles (land-grant Corinth to Meridian); Meridian to Birmingham via Alabama Great Southern [fol. 54] R. R., 153.3 miles (land-grant Alabama-Mississippi State Line to Birmingham); Birmingham to Parrish via Southern Ry. (non-land-grant) 42.1 miles; Parrish to Sheffield via Northern Alabama Ry. (non-land-grant) 95.3 miles, a through mileage of 577.72 miles.

On items Nos. 162 and 163, \$136.62, the shipments consisted of various articles. The defendant, for land-grant equalization purposes, used a route as follows: Memphis to Meridian, via Mobile & Ohio R. R., 287.02 miles (land-grant Corinth to Meridian); Meridian, Miss., to Attalla, Ala., via Alabama Great Southern R. R., 209.2 miles (land-grant Alabama-Mississippi State Line to Attalla); Attalla to Sheffield via Southern Ry. (non-land-grant) 306.1 miles, total distance 802.32 miles.

Commercial shipments do not move over the routes used by defendant in its calculations.

22. On items 215 and 216 of Exhibit No. 8 to the petition the shipments were from Decatur, Ala., to Margerum, Ala., a distance of 67.5 miles over plaintiff's line, by which they actually moved. This was a non-land-grant route and plaintiff billed at full commercial rates, i. e., without land-grant deduction. In payment defendant deducted \$48.95 on account of land-grant equalization, arriving at this deduction by use of the following route: Decatur to Birmingham via Louisville & Nashville R. R., 85 miles (a land-aided road);

This route included no land-aided line beyond Cairo. In certain instances plaintiff, however, in submitting its bills to defendant made some deductions south of Cairo for land-grant equalization, but less in amount than applied by the defendant in payment of plaintiff's bills. These particular [fol. 44] deductions were inadvertently made by plaintiff's clerks and are not representative of plaintiff's practice.

8. On shipments covered by items 121, 141, 142, and 143 of Exhibit No. 4 to the petition, defendant, for the purpose of computing rates, used its route from Cairo as follows:

Mobile & Ohio R. R. to Meridian, Miss.; thence via Alabama Great Southern R. R. to Birmingham, Ala.; thence via Louisville & Nashville R. R. to Montgomery, Ala.; thence via Central of Georgia Ry. to Columbus, Ga.; thence via plaintiff's line.

On all other shipments listed in Exhibit No. 4 to the petition defendant used for computation of freight rate a route from Cairo as follows:

Mobile & Ohio R. R. to Meridian; thence via Alabama Great Southern R. R. to Birmingham; thence via Louisville & Nashville R. R. to Calera, Ala.; thence via plaintiff's line.

The routes so used by defendant included certain land-aided mileage of the Mobile & Ohio R. R. between Cairo and Meridian, of the Alabama Great Southern R. R. between Meridian and Chattanooga, of the Louisville & Nashville R. R. between Birmingham and Montgomery, of the Central of Georgia Ry. between Montgomery and Columbus, and of the Southern Ry. between Calera, Ala., and Spartanburg, S. C.

The shipments on item 119 of Exhibit No. 4 to the petition, South St. Paul, Minn., to St. Matthews, S. C., on items 21 and 22 from Sioux City, Ia., to Asheville, N. C., on item 69, South St. Paul to Asheville and on item 9, South St. Paul to Ninety Six, S. C., moved via Cairo, Ill. All other shipments moved via junctions other than Cairo, such as Cincinnati or Elkhorn City.

9. The following table shows approximately, in respect to the various items of Exhibit No. 4 to the petition, (a) the number of miles via route of actual movement, (b) the mile-

Birmingham to Parrish via Southern Ry., 42.1 miles (non-land-grant); Parrish to Sheffield via Northern Alabama Ry., 95.3 miles (non-land-grant); Sheffield to Margerum via Southern Ry., 23.6 miles (non-land-grant), a total distance of 246 miles.

The route so used by defendant is not in use by commercial traffic.

For further matter in connection with these items see Findings No. 13, *supra*.

23. Item 225 of Exhibit No. 8 to the petition covers a shipment from Margerum to Decatur, Ala., difference of \$103.45.

The same facts are present in regard to this item as in regard to items Nos. 215 and 216 described in Finding No. 22, *supra*, with directions reversed.

For further matter in connection with this item see Finding No. 13.

[fol. 55]

Third Cause of Action

Department of the Treasury

Department of War

Department of Agriculture

(Exhibit No. 9 to the Petition)

24. In the year 1936 duly authorized representatives of defendant shipped over plaintiff's lines of railway and those of its connections certain Government property from Springfield, Ohio, to Gainesville, Ga., from Kansas City, Mo., to Ft. McClellan, Ala., and from Springfield, Ohio, to Sumter, S. C., on Government bills of lading, and the shipments so consigned were delivered by plaintiff in accordance with the billing.

The items are listed by number in Exhibit No. 9 to the petition, and those now claimed are as follows, all other items being abandoned by plaintiff:

Treasury—

Item 24, Springfield to Sumter	\$144.19
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War—

Items 21 and 22, Kansas City to Ft. McClellan	42.60
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Agriculture—

Item 5, Springfield to Gainesville	137.98
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Total	324.77
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age via plaintiff's rate-making route, (c) the mileage via defendant's rate-making route, and (d) the mileage by which (c) exceeds (a).

There is no satisfactory proof as to excess mileage, if any, with respect to Item No. 134 of Exhibit No. 4 to the petition, on which plaintiff claims \$63.42; Item No. 105, \$77.40, and Item No. 120, \$59.41, and these items are not included in the tabulation.

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Item	(a)	(b)	(c)	(d)
	721.70	756.50	1,178.45	456.75
1,491.20	1,530.90	1,860.05	368.85	
707.90	742.70	1,208.85	500.95	
1,255.40	1,311.60	1,777.75	522.35	
1,255.40	1,311.60	1,777.75	522.35	
1,255.40	1,311.60	1,777.75	522.35	
707.90	742.70	1,208.85	500.95	
1,513.00	1,453.30	1,722.45	209.45	
1,149.40	1,287.20	1,753.35	603.95	
1,142.60	1,292.70	1,758.85	616.25	
1,149.40	1,287.20	1,753.35	603.95	
1,149.40	1,287.20	1,753.35	603.95	
1,142.60	1,292.70	1,758.85	616.25	
1,627.70	1,612.60	1,990.15	362.45	
1,627.70	1,612.60	1,990.15	362.45	
1,433.70	1,379.00	1,801.55	367.85	
740.60	908.70	1,374.85	634.25	
740.60	908.70	1,374.85	634.25	
740.60	908.70	1,374.85	634.25	
1,411.80	1,327.90	1,794.05	382.25	
1,411.80	1,327.90	1,794.05	382.25	
1,387.00	1,366.10	1,788.05	401.05	
765.00	933.10	1,399.25	634.25	
789.90	958.00	1,355.95	566.05	
1,341.83	1,449.40	1,644.95	303.12	
1,355.50	1,449.40	1,779.15	423.65	
1,341.83	1,449.40	1,644.95	303.12	
713.90	748.70	1,214.85	500.95	
716.60	884.70	1,398.85	682.25	
1,655.00	1,634.10	2,011.65	356.65	
1,457.40	1,463.30	1,793.05	335.65	
985.20	1,116.80	1,446.55	461.35	
1,025.30	1,193.40	1,570.95	545.65	
1,055.00	1,634.10	2,011.65	356.65	
1,333.50	1,410.30	1,740.05	406.55	
1,297.10	1,383.70	1,713.45	416.35	
1,297.10	1,383.70	1,712.45	416.35	
985.20	1,116.80	1,446.55	461.35	
1,663.53	1,527.70	1,965.25	241.72	
1,460.00	1,620.30	1,901.75	441.75	
1,655.00	1,634.10	2,011.65	356.65	
1,231.40	1,292.70	1,758.85	527.45	
1,282.83	1,389.40	1,719.15	436.32	
1,282.83	1,389.40	1,719.15	436.32	
1,290.60	1,383.90	1,713.65	423.05	
1,276.93	1,383.90	1,713.65	436.72	
1,388.60	1,389.40	1,719.15	330.55	

The amount of \$324.77 represents deductions made by defendant from freight charges billed and claimed by plaintiff for the transportation performed.

The deductions were erroneously made under paragraph 3 (b) of the freight equalization agreement and defendant concedes that plaintiff is entitled to recover the said sum of \$324.77.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover \$386.83.

The court further concludes as a matter of law that the defendant is entitled to recover on its counterclaim from the plaintiff the sum of \$1,638.56.

[fol. 56] It is therefore ordered and adjudged that the defendant recover of and from the plaintiff the sum of one thousand two hundred fifty-one dollars and seventy-three cents (\$1,251.73).

OPINION

LITTLETON, *Judge*, delivered the opinion of the court:

The pertinent provisions of Paragraphs 1 and 2 (a) of the Land-grant Equalization Agreement are set forth in finding 2. The dispute concerns only the section of land-grant routes for the purpose of determining the proper freight charges to the defendant under the terms of this agreement for government shipments made over plaintiff's lines and its connections. Plaintiff was not a land-grant railroad and it was for this reason that it entered into the equalization agreement referred to. The question in issue is, did the agreement between the parties provide for or require freight charges to the government for transportation of the shipments of government property over the actual routes of movement based upon lawful rates on file with the Interstate Commerce Commission, less deductions for land-grant over the land-aided or land-grant routes affording the lowest net rates, or on some other basis.

The parties stipulate that "The sole issue presented in the first cause of action involves the determination of an available land-aided route south of Cairo, Ill., in accordance with the terms of the plaintiff's freight land-grant equalization agreement, for the purpose of establishing in pertinent part charges for transporting the shipments, listed in said

Item	(a)	(b)	(c)	(d)
51.	1,439.40	1,445.30	1,756.75	317.35
52.	1,667.20	1,474.90	1,804.65	137.45
53.	1,382.40	1,475.70	1,805.45	423.05
54.	1,499.70	1,539.40	1,868.55	368.85
55.	1,572.30	1,593.00	1,917.15	344.85
57.	1,525.60	1,628.40	2,005.95	480.35
58.	1,001.40	1,036.20	1,413.75	412.35
59.	907.50	993.70	1,459.85	552.35
60.	1,228.43	1,287.20	1,753.35	524.92
61.	1,565.50	1,326.60	1,748.55	183.05
62.	1,301.20	1,332.10	1,754.05	452.85
63.	1,390.30	1,421.40	1,850.15	459.85
64.	1,390.30	1,421.40	1,850.15	459.85
67.	1,247.90	1,379.00	1,801.55	553.65
68.	1,246.20	1,292.70	1,758.85	512.65
69.	1,332.60	1,287.20	1,753.35	420.75
70.	1,195.60	1,317.10	1,802.83	607.23
71.	1,268.53	1,376.10	1,705.85	437.32
72.	1,302.80	1,373.40	1,703.75	400.35
73.	1,164.20	1,491.70	1,821.45	657.25
74.	1,698.63	1,557.80	1,907.15	208.52
78.	1,545.30	1,598.90	1,976.45	431.15
79.	1,444.60	1,336.50	1,734.45	289.85
80.	1,303.33	1,410.30	1,740.05	436.72
81.	1,295.00	1,597.70	1,841.05	546.05
82.	1,543.70	1,492.90	1,870.45	326.75
83.	1,449.90	1,496.40	1,873.95	424.05
84.	1,449.90	1,496.40	1,874.95	424.05
85.	1,349.40	1,311.60	1,777.75	428.35
86.	1,255.40	1,311.60	1,777.75	522.35
87.	1,368.60	1,358.90	1,688.65	320.05
[fol. 46]				
88.	1,448.70	1,485.00	1,753.35	304.65
89.	1,581.00	1,515.60	1,844.75	263.75
90.	1,444.60	1,336.50	1,734.45	289.85
91.	1,324.60	1,330.90	1,752.85	428.25
92.	1,307.30	1,360.90	1,690.65	383.35
93.	1,263.50	1,353.40	1,683.15	419.65
94.	1,280.00	1,353.40	1,683.15	403.15
95.	1,388.30	1,358.90	1,688.65	300.35
96.	1,252.80	1,358.90	1,688.65	435.85
98.	1,307.30	1,360.90	1,690.65	383.35
99.	989.20	1,061.90	1,391.65	402.45
100.	1,384.30	1,454.90	1,784.65	400.35
106.	1,298.10	1,354.30	1,820.45	522.35
107.	1,379.93	1,400.90	1,804.35	424.42
108.	1,379.93	1,400.90	1,804.35	424.42
110.	1,379.93	1,400.90	1,804.35	424.42
111.	1,379.93	1,400.90	1,804.35	424.42
112.	1,457.90	1,504.40	2,011.25	553.35
113.	1,451.90	1,454.40	1,843.05	391.15
115.	1,246.20	1,292.70	1,758.85	512.65
116.	1,246.20	1,292.70	1,758.85	512.65
117.	1,255.40	1,311.60	1,777.75	522.35
118.	721.70	756.50	1,179.05	457.35
119.	1,606.70	1,486.20	1,820.90	214.20
121.	1,377.70	1,409.60	1,945.75	568.05
122.	1,754.50	1,523.10	1,900.65	146.15
123.	1,755.50	1,542.10	1,899.65	144.15
124.	1,755.50	1,522.10	1,899.65	144.15
125.	1,228.43	1,287.20	1,753.35	524.92
126.	1,584.80	1,517.00	1,847.95	263.15

Exhibit 4 to the petition, over the actual routes of movement." As to the second cause of action, the parties stipulate that "There is no controversy respecting the amount of the commercial rates used by the plaintiff and the defendant, nor is there any dispute as to the fact that the net amounts indicated by the defendant as properly payable have been computed correctly over the land-aided routes used by the defendant as a basis for such payments. The sole issue is the selection of an available land-aided route, if any, in accordance with the terms of the plaintiff's freight land-grant equalization agreement, for the purpose of establishing charges for transporting the shipments, listed in Exhibit 8 (to the petition), over the actual routes of movement."

[fol. 57] The third cause of action has been settled by stipulation and presents no controversy. See Finding 24.

The provision of the agreement in question seems plain enough without resort to construction when it is interpreted according to the ordinary signification of the language used, but plaintiff contends that under a proper construction of the agreement based on what it contends was the intention of the parties, it agreed only to equalize net freight rates computed via *competitive routes*, that is, routes which are in fact competitive in the ordinary commercial sense, and that it did not agree and is not required to equalize to the government net rates computed in each case via the land-grant route from point of origin to destination in fact producing the lowest net rate, regardless of whether such route is in fact commercially competitive and regardless of how circuitous and impractical it may be. In addition plaintiff asks the court to define the term: "competitive routes." The unambiguous language of the equalization agreement expresses the final intention of the parties as to the routes and rates and the legal import of such language is opposed to plaintiff's contention. Simply stated, the plaintiff by Paragraph 1 of the equalization agreement stipulated without qualification or exception to accept for the transportation of government property the lowest net rates lawfully available over land-aided routes. By its express terms the agreement prescribed this measure of reduced commercial tariff rates to the equalizing carrier as the basis for computing freight charges for the transportation of government property over the actual route of movement. Except as reflected

127.	1,566.50	1,499.10	1,828.25	261.75
128.	1,507.06	1,498.70	1,793.65	286.59
129.	1,310.50	1,357.00	1,825.95	515.45
130.	1,390.30	1,421.40	1,850.15	459.85
131.	1,337.10	1,573.50	1,941.25	604.15
132.	1,657.80	1,516.60	1,894.15	236.35
133.	1,657.80	1,516.60	1,894.15	236.35
135.	1,247.90	1,379.00	1,801.55	553.65
136.	1,247.90	1,379.00	1,801.55	553.65
137.	1,340.73	1,447.70	1,777.45	436.72
138.	1,229.60	1,325.40	1,747.95	518.35
139.	1,547.70	1,512.40	1,745.45	197.75
140.	1,247.90	1,379.00	1,801.55	553.65
141.	1,347.70	1,394.40	1,927.75	580.05
142.	1,361.50	1,317.00	1,951.25	589.75
143.	1,361.50	1,317.00	1,951.25	589.75
145.	1,001.40	1,036.20	1,413.75	412.35
146.	1,001.40	1,036.20	1,413.75	412.35
147.	1,001.40	1,036.20	1,413.75	412.35

[fol. 46] 10. All the shipments covered by Exhibit No. 4 to the petition consisted of livestock, moved from drought-stricken areas to grazing lands in the South where it was possible for them to subsist. The number of cars in each shipment ranged from 1 to 19, with an average of 5 cars to a shipment.

The routes used by defendant for land-grant deduction purposes south of Cairo in computing net freight rates are not used by or for commercial traffic.

A map showing the land-grant lines south of Cairo, insofar as herein involved, routes used by plaintiff, routes used by the defendant, and alternative routes used by neither, applicable to the shipments listed in Exhibit No. 4 to the petition, and bearing on its face a legend identifying the [fol. 47] various routes, is filed in the case as plaintiff's Exhibit No. 26 and is made part hereof by reference.

The routes used by defendant in its calculations would have required, if the livestock had actually moved over them, two or three stops for feed, water, and rest, additional to those required on the route in fact traversed, and a minimum of three additional days in transit. The extra cost of feeding would have had to be borne by the shipper.

The livestock was shipped during July, August, and September, at a time of year that is hard on livestock in cattle cars.

The carriers' tariff requirements were for 200 pounds of feed per car for cattle at each stop for rest, feed, and water. The cost to defendant would have been in the neighborhood of \$2.50 for 200 pounds of hay.

in the adjustments in defendant's counterclaim, the net freight charges due plaintiff were computed by defendant over land-grant routes lawfully available. The land-grant routes so selected and used for computation of rates by defendant under lawful tariffs on file with the Interstate Commerce Commission were admittedly available to the commercial public and to the government and could have been used for the making of all of the shipments in question. Beyond this the equalization agreement is silent as to the extent to which the land-grant routes to be selected must be commercially competitive or practical or as to the extent or limit of circuity of the land-aided routes which may be used to determine "the lowest net rates lawfully available." Paragraph 2 of the agreement provided for exceptions and [fol. 58] none that is pertinent here was made. It is not for the court to supply by construction the exceptions and limitations for which plaintiff contends when the agreement as written by clear and definite language specified, without qualification or restriction, the basis for determining the extent of the government's obligation for services rendered thereunder. Plaintiff seeks by construction to engraft upon the language of the contract a term or condition, i.e. "via competitive routes," which is not expressly or by necessary implication included therein. Compare *Louisville & Nashville R. R. v. United States*, 61 C. Cls. 1, in which the agreement provided for land-grant deductions "via the longest land-grant mileage . . . over usually traveled routes." With reference to competition and circuity of routing as to which the plaintiff's agreement is silent, it should be pointed out that a route which is competitive for commercial traffic may or may not be competitive for government traffic which is subject to reduced rates over lawfully available land-grant routes. In the transportation of government property the competition for it is between the non-land-grant or equalization agreement carriers. A land-grant route which the government might regard as entirely adequate for shipment of its property might not be regarded as a practical route over which commercial shippers not entitled to freight rate reductions ordinarily would elect to make their shipments. However, circuity routing is a well known factor in connection with transportation rates and is favored by carriers to secure traffic and by shippers to meet particular situations. These matters were well known to the parties

There are alternative routes not made use of either by plaintiff or by defendant, that would result in less net freight charges than claimed by plaintiff, and higher net freight charges than conceded by defendant. There is no evidence of any particulars with respect thereto.

11. If the routes used by defendant in calculation of net freight charges on Exhibit No. 4 to the petition are applicable under the Freight Land-grant Equalization Agreement there are due the defendant overpayments made by it to plaintiff on items (not now waived by plaintiff), of the exhibit in certain several amounts as follows:

Item:	Due	Item:	Due	Item:	Due
1.....	\$7.48	36.....	\$14.73	85.....	\$94.51
3.....	7.09	41.....	13.57	86.....	21.81
4.....	8.32	42.....	10.13	90.....	65.36
5.....	7.91	43.....	10.28	91.....	6.68
11.....	11.23	57.....	3.66	95.....	4.12
13.....	43.48	58.....	47.98	96.....	14.53
15.....	9.79	63.....	6.63	98.....	4.34
16.....	4.21	64.....	19.92	105.....	15.79
17.....	41.75	67.....	43.02	106.....	56.74
18.....	5.29	68.....	104.71	107.....	18.82
19.....	25.75	69.....	7.49	108.....	14.94
21.....	47.25	78.....	38.38	110.....	6.76
22.....	35.43	79.....	41.62	111.....	6.89
24.....	2.74	81.....	3.50	112.....	3.70
26.....	59.63	82.....	12.54	113.....	15.36
30.....	10.05	83.....	13.96	116.....	16.19
32.....	9.83	84.....	14.42	117.....	9.31
[fol. 48]					
118.....	\$7.37	131.....	\$6.31	141.....	\$1.02
120.....	45.08	132.....	7.81	142.....	13.90
121.....	60.27	133.....	10.91	143.....	21.88
122.....	49.78	134.....	48.73	145.....	10.01
123.....	8.18	135.....	7.57	146.....	10.01
124.....	8.09	136.....	7.57	147.....	50.02
129.....	23.95	139.....	.84		
130.....	7.99	140.....	6.65		
Total.....					1,533.56

On the same basis there are the following underpayments to plaintiff:

Item:	Due
7.....	\$4.53
35.....	8.35
Total.....	12.88

The difference is an overpayment to plaintiff of \$1,520.68, on items not now waived.

The net overpayment by defendant to plaintiff on the items sued on in the first cause of action, including some

when the equalization agreement was made, and they knew also that, according to custom, there was no mileage or distance limitation in any of the tariffs which fixed routes and rates lawfully available to the government as well as to the public, and they made none in the equalization agreement. Neither did the equalization agreement make any reference to the allowable percentage of circuitry from point of origin to destination in determining deductions on account of land-grant distances. Under the agreement the lowest net rate lawfully available as derived through land-grant deductions is not conditioned in any case upon the character of the property shipped. The formula for determining the freight [fol. 59] rate which plaintiff agreed to accept is definitely set forth whether the property shipped be cattle or steel.

It would appear from the Regulations of the Quartermaster General, U. S. Army, issued in 1916 and existing at the time the agreement in question was made (see also, Act of July 5, 1884, 23 Stat. 107, 111), that any general or special limitation or qualification such as that for which plaintiff now contends was purposely left out of plaintiff's stipulation "to accept the lowest net rates lawfully available" to the Government over available land-grant routes. Those Regulations (Manual for the Quartermaster Corps, U. S. Army, 1916, App. No. 9, Vol. 2, p. 223; Quartermaster General Circular No. 15, May 18, 1922), provided in part as follows:

Particular attention is invited to the special exceptions of certain carriers to both passenger and freight agreements. Where these special exceptions provide that the carriers shown in the margin will not equalize the lowest net rates available on certain specified traffic, such traffic should not be forwarded via the carriers shown, unless no other route is available. Where special exceptions provide that lowest available rate will not be protected via certain routes, such routes should not be used.

We cannot amend the agreement which the parties themselves elected to make, by undertaking to prescribe qualifications as to distance or percentage of circuitry of available land-grant routes. As written, the equalization agreement is easily understood and simple of administration, and the

of those now waived by plaintiff, is \$1,618.41 if the route used by defendant is held to be correct under the terms of the equalization agreement. Defendant makes counterclaim for this overpayment.

SECOND CAUSE OF ACTION

Tennessee Valley Authority

(*Exhibit No. 8 to the Petition*)

12. Between July 24, 1934, and February 17, 1938, on behalf of the Tennessee Valley Authority, a duly authorized agency of the United States, there were shipped over plaintiff's lines and its connections 227 shipments of various kinds of Government property from and to the points listed in Exhibit No. 8 to the petition. All of these shipments were transported on Government bills of lading and were delivered by plaintiff in accordance therewith.

13. For the transportation service so rendered plaintiff submitted its bills on which it claimed freight charges totaling \$8,984.69, of which amount defendant paid plaintiff \$7,467.48, leaving a balance of \$1,517.21 unpaid, as set forth in Exhibit No. 8 to the petition.

[fol. 49] Plaintiff now limits its claims to the following items of the exhibit, in the amounts indicated, and abandons claim as to all other items of the exhibit:

Item:	Claim	Item:	Claim	Item:	Claim
12.	\$19.26	104.	\$2.97	177.	\$44.32
14.	9.63	105.	3.30	178.	1.92
15.	1.13	113.	.66	179.	1.48
20.	1.03	114.	5.16	182.	.43
21.	8.87	115.	1.10	184.	.78
26.	14.26	118.	2.40	185.	20.13
29.	2.26	123.	.85	187.	10.45
30.	.70	124.	2.18	188.	16.33
34.	.72	125.	1.52	190.	.22
35.	.91	126.	1.23	191.	1.65
36.	1.33	127.	1.25	195.	.47
37.	1.69	128.	.46	196.	1.08
39.	14.90	133.	.55	197.	1.00
40.	10.65	134.	.54	198.	2.63
41.	1.06	135.	1.03	199.	1.61
46.	2.86	136.	1.47	200.	33.61
54.	3.36	137.	.53	201.	.69
55.	2.32	140.	.44	202.	3.88
56.	2.70	144.	.19	203.	1.78
57.	.65	145.	1.63	204.	1.50
58.	.70	146.	.42	205.	.39
59.	3.73	147.	2.55	206.	.80
64.	1.02	149.	2.21	209.	19.82
65.	11.40	150.	1.77	212.	1.27

language used discloses that this was intended as one of the main objects of the agreement, whereas the construction for which plaintiff contends would unavoidably result in uncertainty, confusion, and constant controversy, as the facts in this case so clearly demonstrate. In between the routes used by defendant and the routes used by plaintiff, there are many alternative routes. Which shall be chosen if we depart from the clear and definite language of the equalization agreement which gives the government "the lowest net rates lawfully available . . . from point of origin to destination at time of movement"? The answer as to what other routes should be used can not be found in the equalization agreement and is impossible on the record as it stands, [fol. 60] and probably never could be arrived at, either administratively or judicially, with any degree of satisfaction without a detailed and expert inquiry into each case and the adoption of an arbitrary allowable percentage of circuitry. We can find no justification or authority in the language or intention of the agreement for the selection by the court of some intermediate available route which produces a higher net freight rate to plaintiff than the "lowest net rate lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination." Any question as to whether it is unfair and unreasonable to require plaintiff to equalize net charges computed at lawful tariff rates via the land-grant routes used by defendant is foreclosed by the tariffs lawfully on file with the Interstate Commerce Commission. The question of reasonableness of tariff rates and routes is one over which this court has no jurisdiction. It has been committed by Congress to the Interstate Commerce Commission.

Under the equalization agreement and the routing instructions of the applicable lawful tariffs the defendant has, as shown by the findings, overpaid plaintiff a total of \$1,638.56 on certain items of shipments and underpaid it a total of \$386.83 on other items, or a net overpayment of \$1,251.73, for which counterclaim is made. See findings 11, 13, and 24.

The amount of \$386.83 which plaintiff is entitled to receive is less than the amount of the overpayment to it for which the defendant is entitled to recover \$1,638.56 on its counterclaim. Judgment will therefore be entered in favor

Item:	Claim	Item:	Claim	Item:	Claim
66	1.96	151	29	213	10.02
75	34.84	152	55	214	7.0
77	.31	153	.28	215	26.14
78	5.33	159	16.27	216	22.81
79	.38	162	75.04	217	28.89
80	.73	163	61.58	218	2.99
81	1.10	164	13.42	219	1.28
82	1.40	166	3.42	220	33.51
83	1.73	167	2.07	221	18.22
86	28.00	168	.38	222	33.90
87	32.64	169	.37	223	17.94
88	27.34	170	.66	224	18.19
100	1.33	171	2.55	225	103.45
101	.44	172	.60	226	10.91
102	.90	173	.74	227	33.15
103	.43	175	35.87		
Total					1,043.14

On the basis of settlement employed by defendant in payment, plaintiff has been underpaid by defendant, as [fol. 50] shown on defendant's exhibit E, the net sum of \$41.91, distributed in items of Exhibit No. 8 to the petition as follows:

<i>Due plaintiff on defendant's basis</i>	
215	\$8.44
216	6.55
225	34.19
Total	49.18
95—Due United States	7.27
Net underpayment	\$41.91

There were other routes via land-aided roads which could have been used as a basis for calculation of net freight charges, with resulting calculations of net charges less than herein claimed by plaintiff and more than herein claimed by defendant. Full particulars with regard to such routes and resulting charges are not in evidence.

There is no satisfactory evidence of record with respect to item No. 188 in the amount of \$10.33, and no further finding with respect thereto is made herein.

14. The shipments listed as items 12, 14, 15, 20, 21, 26, 29, 30, 34, 35, 36, 37, 39, 40, 41, 46, 54, 55, 56, 57, 58, 59, 64, 65, 66, 77, 78, 79, 80, 81, 82, 83, 100, 101, 102, 103, 104, 105, 113, 114, 115, 118, 123, 124, 125, 126, 127, 128, 133, 134, 135, 136, 137, 140, 144, 145, 146, 147, 149,

of the defendant for the difference of \$1,251.73. It is so ordered.

MADDEN, Judge; WHITAKER, Judge; and WHALEY, Chief Justice, concur.

JONES, Judge, took no part in the decision of this case.

[fols. 61-62] V. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the 4th day of October, A. D., 1943, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover \$386.83.

The court further concludes as a matter of law that the defendant is entitled to recover on its counterclaim from the plaintiff the sum of \$1,638.56.

It is therefore ordered and adjudged that the defendant recover of and from the plaintiff the sum of one thousand two hundred fifty-one dollars and seventy-three cents (\$1,251.73).

[fols. 63-64] VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On November 16, 1943, the plaintiff filed a request for record in re certiorari under Rule 99b, together with a copy of the petition and copies of other parts of the record as are material to errors assigned.

On November 22, 1943, the defendant filed copies of such other parts of the record as, in his judgment, are material to errors assigned.

[fols 65-66] VII. ORDER SETTLING RECORD

Order

Settling and Approving Transcript of Record on Petition
for Certiorari

The within transcript prepared from the original record in this court in the above-styled case having been proposed in part by plaintiff and in part by defendant as that por-

150, 151, 152, 153, 159, 172, 173, 179, 182, 185, 190, 191, 195, 196, 197, 198, 204, 205, 206, 209, 212, moved from Sheffield, Alabama, to Corinth, Mississippi, over plaintiff's line, a distance of 54.3 miles, being a route not aided by land grants. The total claim on these items is \$241.19. Plaintiff billed its charges against defendant at full commercial rates, and now claims such rates. The defendant in payment deducted from plaintiff's bills \$241.19. In arriving at this deduction defendant used the following route for purpose of land-grant deduction: Sheffield to Parrish, Ala., via Northern Alabama Ry.; thence to Birmingham, Ala., via plaintiff's line; thence to Meridian, Miss., via Alabama Great Southern R. R.; thence via Mobile & Ohio R. R. to destination, a distance of 484.82 miles. The land-grant lines on the route used by defendant for equalization purposes were from Birmingham to the Alabama-Mississippi State Line and from Meridian to Corinth.

[fol. 51] Commercial shipments do not move from Sheffield to Corinth by way of the route used by defendant.

There are certain alternative land-grant routes from Sheffield to Corinth used neither by plaintiff nor by defendant in their calculations, which would result in higher net charges than paid by defendant and lower net charges than those contended for by plaintiff. These alternative routes are illustrated by the map in evidence as plaintiff's Exhibit No. 42, made a part hereof by reference, the lines depicted in red being the land-aided roads. The alternative routes are not used by commercial traffic.

15. The shipments covered by items Nos. 166, 167, 170, 171, 184, 199, and 200 of Exhibit No. 8 to the petition, moved from Corinth to Sheffield over plaintiff's line, 54.3 miles. The differences thereon, claimed herein, total \$44.70. Plaintiff billed for the full commercial rate. Defendant deducted therefrom \$44.70 in settlement, using a land-grant equalization route as in the case of shipments in the reverse direction, Sheffield to Corinth, *supra*, Finding No. 14, and the findings therein made apply in both directions.

16. The shipments listed as items 164, 168, 169, 217, 218, 219, 226 of Exhibit No. 8 to the petition, on which a total of \$58.24 is claimed, moved for Sheffield to Decatur, Ala., entirely by way of the Southern Railway, a distance of 44.1 miles, non-land grant; and plaintiff billed without land-grant deduction, and now claims full commercial charges

tion of the record material to the errors assigned in the petition of plaintiff for a writ of certiorari, and such transcript having been considered and found to be an accurate statement of the portions of the original record material to the errors assigned, the same is, this November 24, 1943, hereby settled and approved.

By the Court:

Richard S. Whaley, Chief Justice.

[fols. 67-68] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 69] OTHER PARTS OF THE EVIDENCE REQUESTED BY PLAINTIFF TO BE INCLUDED IN THE TRANSCRIPT OF THE RECORD IN RE CERTIORARI

Washington, D. C. Tuesday, April 28, 1942.

1Q. What is your name, please?

A. L. V. Crane.

2Q. By whom are you employed, Mr. Crane?

A. Southern Railway.

3Q. How long have you been with the Southern Railway Company?

A. About thirty years.

4Q. In what department?

A. Freight traffic department.

5Q. What is your present title?

A. Freight traffic manager.

Mr. Boxley. Mr. Commissioner, the freight land-grant equalization agreement of November 29, 1933 was filed herein with a stipulation. I do not know whether a copy of the agreement is available, but I have another copy which I should like to refer the witness to.

[fol. 70] Mr. Mehlinger. That is all right.

By Mr. Boxley:

8Q. Mr. Crane, I hand you a photostatic copy of a letter dated November 29, and ask you to identify it.

A. (Examining the letter) The letter is entitled "Freight Land-Grant Equalization Agreement," and it was filed on behalf of the Southern Railway and Alabama Great Southern Railroad Company, the Cincinnati, New Orleans and Pacific (sic) Company—

9Q. Pardon me; you need not mention those.

A. Very well.

10Q. Mr. Crane, did you have anything to do with the making of that agreement?

A. I did.

• • • • •
13Q. Did you carry on the negotiations?

A. I did, and I actually prepared this agreement.

14Q. Mr. Crane, will you state, please, what the purpose of that agreement was?

A. The purpose of the agreement was to secure the handling of traffic.

By Commissioner Hobbs:

15Q. To do what?

A. To secure the handling of traffic which in the absence [fol. 71] of the agreement might otherwise move over competing railroads.

• • • • •
1Q. What is your full name, Mr. Harper?

A. W. N. Harper.

2Q. By whom are you employed?

A. Southern Railway Company.

3Q. At what place?

A. Charlotte, North Carolina.

4Q. How long have you been with the Southern Railway Company?

A. Thirty-seven years.

5Q. In what department?

A. In the transportation department.

6Q. What is your present title, Mr. Harper?

The Commissioner: Just a minute. I do not understand what he means by "transportation department."

By the Commissioner:

7Q. Won't you give us a little more detail?

A. The transportation department is that part of the operating department which has supervision of the movement of trains.

8Q. You are in the operating department?

A. Yes, sir.

[fol. 72] The Commissioner: All right.

By Mr Boxley:

9Q. Did you state what your present title is?

A. Assistant general superintendent of transportation.

14Q. It has further been testified that the blue line on this Exhibit 26 represents the routes used by the Government in computing the rate south of Cairo.

38Q. I do not recall whether I asked you whether you regard those routes shown in blue as competitive on traffic moving from the Northwest and West into North and South Carolina. If I did not ask you, I ask you now, Do you regard those routes as competitive or not?

A. No, sir; I do not.

[fol. 73] 42Q. Now, Mr. Harper, do you regard the government route through Meridian, Birmingham, and Calera, and through Montgomery and Columbus, and the so-called alternate routes shown in yellow, as logical or illogical, natural or unnatural?

The Commissioner: I do not know what you mean by "logical." What is the other adjective you used?

Mr. Boxley: Natural or unnatural.

The Commissioner: Well, I confess the question conveys no particular meaning to me. I do not know what you mean by a natural route or an unnatural route.

Mr. Boxley: I mean from a transportation standpoint. I am putting the question to a transportation witness.

The Commission: (sic) If the question you are getting at is whether or not they are practical routes, he may answer that question.

Mr. Boxley: Well, I will state it that way.

The Commissioner: All right.

A. I would consider it a very unpractical route—in fact, if I may say so, it would be a preposterous route. No one would consider routing livestock via such a route and confining your cattle from two to three to four days longer and requiring two to three additional feedings.

Mr. Boxley: That is all.

[fol. 74]

[Title omitted]

OTHER PARTS OF THE EVIDENCE REQUESTED BY DEFENDANT TO BE INCLUDED IN THE TRANSCRIPT OF THE RECORD IN RE CERTIORARI

3Q. What is your fullname, Mr. Byrd?

A. Ernest Nevitt Byrd.

4Q. By whom are you employed?

A. Southern Railway.

6Q. How long have you been employed by the Southern Railway?

A. 23 years.

7Q. During that time in what department have you been employed?

A. I have been in freight rates, under the auditor of freight accounts.

8Q. What is your present title?

A. Chief rate clerk, Southern Railway, Auditor of Freight Accounts.

[fol. 75] 9Q. Just explain briefly, Mr. Byrd, what your duties consist of.

A. My duties consist of the supervision of the rating and distribution of revenue of all received traffic consigned to consignees, reported by agents of the Southern Railway System; to interpret tariffs; issue instructions to my force, whose duty is to revise the rates and make distribution of the revenue.

165X Q. Mr. Byrd, I believe you said that you supervised the preparation of these bills and the computation of this statement that was introduced in exhibits 6 to 17 and 30 to 39, mainly mileage exhibits with reference to certain tariffs, and in support of those mileages you have stated various charges which you assert to be due.

Now, just how does a distance tariff figure in the determination of the commercial rate in these particular instances as far as those shipments are concerned? In other words, is the distance tariff necessary for determination of the commercial rate?

A. These particular rates you are speaking of?

• • •
167X Q. In the first cause of action?

A. No, not the distance.

168X Q. • • • Well, then, does the distance tariff establish any rates between Cairo and destination, we will say, in the first cause of action?

[fol. 76] A. It does not.

169X Q. Does the tariff that publishes the commercial rate from Cairo to destination, which is used as a proportional rate in the first cause of action in connection with alternate shipments, excepting those from East St. Louis, refer to the distance table?

A. It does not.

170X Q. Is it necessary for a commercial tariff to refer to a distance table if the distance table was to restrict the application of the rate?

A. It is. In some of your tariffs where you have a certain amount of circuitry, have a maximum circuitry, you must stay within the bounds of that circuitry.

171X Q. Was there any such circuitry in this tariff in this instance?

A. In the first cause of action there was not.

• • •
172X Q. So it is not necessary to refer to the distance tables at all in an attempt to arrive at the correct commercial rate?

A. You are speaking strictly of the commercial rate?

173X Q. Of the first cause of action.

A. Of the commercial rate?

174X Q. Of the commercial rate.

A. No, there is not.

[fols. 77-78] 1Q. What is your name?

A. Lester L. Whitehead.

2Q. By whom are you employed?

A. The United States Government, General Accounting Office, Claims Division.

3Q. How long have you been employed there?

A. Since October 15, 1934, I believe.

4Q. For whom did you work before that?

A. Mobile & Ohio Railway.

5Q. How long were you working for them?

A. Approximately fourteen years.

6Q. What was the line of your duty while you were working with the railroad company?

A. Handling freight rates, divisions, apportioning revenues between the various carriers.

7Q. What are your duties with the Government?

A. Present duties?

8Q. Present duties.

A. I am claims reviewer, review examiner. It still pertains to preparing the briefs, the rough drafts, for decisions issued in connection with transportation claims against the Government.

11Q. Of course, you are familiar with land grant deductions?

A. I am.

[fol. 79] 12Q. From what kind of rates are land grant deductions made?

A. Commercial rates.

13Q. How are commercial rates made?

A. From tariffs published, lawfully on file with the Interstate Commerce Commission and the various state commissions.

14Q. Over what routes do commercial rates apply?

A. By any route laid down in the tariff.

15Q. Have you ever found rates in a tariff to be restricted to apply only over certain routes to the exclusion of other routes?

A. I did.

17Q. Did you find any limitations in the rate tariffs now in evidence which precluded application of the commercial rates over the routes selected by the Government for the purpose of ascertaining those net charges?

A. No.

18Q. Did you find any provisions in the rate tariffs which restricted application of the commercial rates applied on shipments involved in these proceedings to routes which included no land grant?

A. No.

[fol. 80] 21Q. Are you acquainted with the routing provisions of the tariff from which the livestock rates were taken which were applied in the shipments in the first cause of action?

A. I am.

22Q. Would you say that under the routing provisions of that tariff all routes are available between Cairo and Asheville?

A. All routes comprised of carriers parties to this tariff.

23Q. Would those routes include land-aided routes?

A. They would include some land-aided routes, sure.

24Q. More than one?

A. Many.

25Q. How would you select the land grant route, then?

A. Well, the only way I would know to select the land grant route would be to use the route producing the lowest net rate.

26Q. What is the basis for that statement?

A. The carriers' equalization agreement; the carriers' land grant equalization agreement.

27Q. Are you acquainted with mileage tariffs?

A. I am.

28Q. In your experience have you ever had occasion to use a mileage or distance tariff?

A. I have.

[fol. 81] 29Q. Have you ever found those mileage or distance tariffs in themselves to restrict a rate or to prescribe a route for a rate that is published in another tariff?

A. No, I have not.

30Q. Supposing it was intended that a mileage or a distance tariff was to restrict the application of a rate or establish a route for a rate published in another tariff, how would this be accomplished, if it could be?

A. By specific reference being made to the mileage tariff or table by the tariff publishing the through rate.

31Q. Did you find any such reference to distance or mileage tariffs in the tariff which published the rates applied on the livestock involved in these proceedings?

A. I did not.

[fol. 82]

[Title omitted]

AGREED STATEMENT OF FACTS—Filed March 30, 1942

I

Plaintiff is a corporation duly organized and existing under the laws of Virginia and as such corporation now is and was during all of the times hereinafter mentioned engaged as a common carrier in the transportation of passengers and freight in interstate and intrastate commerce.

All of the shipments listed in Exhibits Nos. 4, 8, and 9 to plaintiff's petition were delivered within six years prior to the date of the filing of the petition herein.

[fol. 83]

III

Plaintiff was the last or delivering carrier of each of the shipments hereinafter mentioned and as such was entitled to collect the freight charges thereon; plaintiff has made no assignment or transfer of the claims herein averred, or any part thereof or any interest therein; plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

IV

On November 29, 1933, plaintiff and defendant entered into an agreement entitled "Freight Land-Grant Equalization Agreement," a copy of which is marked "Plaintiff's Exhibit No. I" and attached hereto and made a part hereof.

Under said agreement plaintiff agreed, subject to certain conditions and exceptions therein stated, which have been observed and complied with except as hereinafter shown in connection with the third cause of action:

to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deduction account of land-grant distance from [fol. 84] the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

Said agreement, which did not embody any express mileage limitations, was in full force and effect on the dates of transportation of all shipments involved in the three causes of action embraced in this proceeding.

First Cause of Action

V

Between July 13, 1934, and September 15, 1934, the Federal Surplus Relief Corporation, as consignor and duly authorized agent of the United States, shipped over plaintiff's lines and its connections the 147 shipments of livestock listed in Exhibit No. 4 to the petition herein, property of the United States, from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin, and Nebraska to points in North Carolina, South Carolina, Georgia, Tennessee, and Virginia. Plaintiff transported and delivered each of said shipments in accordance with the uniform livestock contracts. Upon delivery of the shipments at destinations, the said uniform livestock contracts were surrendered to the carrier together with stickers attached thereto reading, in part, as follows:

Property of the Federal Government

Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in the [fol. 85] same manner as if under a Government Bill of Lading.

Instructions for billing:

1. Consignee should pay no charges on this shipment.
2. Charges to be billed to the Dept. or Estab. and Bu. of Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

VI

For said transportation services plaintiff submitted its bills on which it claimed freight charges totaling \$88,481.89, of which amount defendant paid plaintiff \$78,584.99, leaving a balance of \$9,896.90 claimed by plaintiff to be due and unpaid, as set forth in said Exhibit No. 4. Plaintiff, however, has abandoned the amounts claimed on items Nos. 8, 25, 45, 65, 66, 75, 76, 77, 97, 101, 102, 103, 104, 109, 114, and 144, totaling \$366.58, and claims a balance of \$9,530.32 to be due on account of said shipments.

VII

The through commercial charges, from points of origin to destinations, on the shipments listed in Exhibit 4 to the petition herein, except those shown to have originated at East Saint Louis (National Stock Yards), Illinois, are computed, under the applicable tariffs, on the basis of a combination of rates comprising as factors in each instance the rate from origin to Cairo, Illinois, and the rate from [fol. 86] Cairo to destination. The controversy as to the net charges derived from said basis relates solely to the extent, if any, that land-grant deductions south of Cairo, Illinois, are authorized.

Those shipments shown in said Exhibit 4 as having originated at East Saint Louis (National Stock Yards), Illinois, moved to the respective destinations under through rates published as such. There is no dispute as to the proportion of the respective through rates and the land-grant deductions therefrom used by the defendant north of Cairo, Illinois, in the computation of the amounts paid plaintiff.

The rate factors from Cairo, Illinois, and the through rates from East Saint Louis (National Stock Yards), Illinois, via Cairo, Illinois, to the respective destinations shown in said Exhibit 4 were published in Agent F. L.

Speiden's tariff No. 148-B, I. C. C. 1335, hereinafter referred to as Speiden's Tariff.

Said tariff did not impose any distance limitations upon the application of the commercial rates published therein, which rates were applicable also on like commercial shipments between Cairo and East Saint Louis (National Stock Yards), Illinois, as points of origin, and the respective destinations listed in Exhibit 4 to the petition, via the land-aided routes used by defendant in computing the charges payable under the equalization agreement.

Speiden's Tariff and supplements thereto, marked defendant's Exhibit A, are attached hereto and made a part hereof by reference.

Interstate Commerce Commission Circular No. 20, and Supplement No. 5 thereto, marked defendant's Exhibits B and C, said circular being referred to specifically on the title page of certain supplements to Speiden's Tariff, are also attached hereto and made a part hereof by reference.

VIII

Plaintiff and other carriers composing the land-aided routes south of Cairo, Illinois, via which the respective payments made by defendant to plaintiff for the shipments described in said Exhibit 4 were computed, were all parties to Speiden's Tariff.

IX

Speiden's Tariff specified on page 81 thereof that unless otherwise specifically provided in that Tariff and supplements thereto, the rates published therein on livestock were applicable via all routes of carriers parties to that Tariff, except via routes embracing carriers to the extent shown in item 300. The routing restrictions shown in said item are not pertinent to the first cause of action. On page 80 of the Tariff, in item 158, under the caption "Non-Application of Rates," the rates in said Tariff are so qualified that application thereof in connection with the Southern Railway Company from points in Illinois to points in North Carolina and Virginia could not be had through any point in the States of Mississippi, Alabama, or Georgia, except via points in these states on the Memphis Division of the Southern Railway between Memphis and Chattanooga, Tennessee, which Division embraces no land-grant

mileage. The Tariff contains no restrictions precluding the application of rates published therein from points in Illinois to points in South Carolina, Georgia, and Tennessee, in connection with the Southern Railway Company through points in Mississippi, Alabama, or Georgia.

Supplement No. 5 to Speiden's Tariff, in item No. 158-A, canceled item 158 of the original tariff and authorized the application of rates as provided in that tariff as amended. The prohibition published in item 158 of the original tariff was not in effect at the time the shipments described in the first cause of action moved, and the tariff as amended and in effect at the time of said shipments contained no similar routing instructions.

X

Supplement No. 58 to Speiden's Tariff, effective December 4, 1933, and in effect during the time the shipments involved in this cause of action moved, contained the following routing instructions:

The rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this [fol. 89] tariff, except as otherwise specifically provided in this tariff, as amended, or as specifically provided in individual rate items or in connection with individual rates.

No exceptions are published in individual rate items or in connection with individual rates, or elsewhere in Speiden's Tariff, as amended, insofar as the shipments herein involved are concerned, which precluded the application of the routing provision of Supplement No. 58.

The several amounts computed by the defendant as properly payable to the plaintiff for the shipments described in said Exhibit 4 to the petition, were determined on the basis of net rates available as derived through deductions account of land-grant distance from the commercial rates lawfully on file with the Interstate Commerce Commission, said commercial rates being applicable, under the pertinent routing provisions of the tariff, on like commercial shipments from Cairo or East Saint Louis, as the case may be, to the respective destinations listed in Exhibit 4, via the routes used by defendant to ascertain the amounts of the several land-grant deductions for the Government shipments here in issue.

Said commercial rates from East Saint Louis (National Stock Yards) or Cairo, Illinois, as the case may be, to the respective destinations in Exhibit 4, published in Speiden's [fol. 90] Tariff, in addition to applying over the routes used by the plaintiff to ascertain the charges claimed and by the defendant to determine the amounts claimed by it to be payable, applied also on like commercial shipments which might have been forwarded via other routes which included Government land-aided mileage, via which the deductions account of land-aided mileage included in such other routes would result in charges which are higher than the amounts paid by defendant, but lower than the amounts claimed by plaintiff.

The sole issue presented in the first cause of action involves the determination of an available land-aided route south of Cairo, Ill., if any, in accordance with the terms of the plaintiff's freight land-grant equalization agreement, for the purpose of establishing in pertinent part charges for transporting the shipments, listed in said Exhibit 4 to the petition, over the actual routes of movement.

XI.

The charges as claimed in the petition are computed on the basis of the full commercial charges from Cairo (or the full proportion of the commercial charges south of Cairo on the shipments from East Saint Louis, Illinois) to the respective destinations named in Exhibit 4 without any deduction for land grant, though in its original bills plaintiff in certain instances, as indicated by reference "A" in Exhibit D, claimed charges on the basis of a reduction in the [fol. 91] commercial rates because of land grant.

XII

Attached hereto and made a part hereof by reference, is a tabulation marked "Defendant's Exhibit D," with explanatory notes showing the amounts that should have been paid if the route used by defendant in computing the rate be correct, the amounts paid, amounts overpaid and underpaid in certain instances, item numbers, origin and destination of the shipments.

Second Cause of Action

XIII

Between July 24, 1934, and February 17, 1938, on behalf of the Tennessee Valley Authority, a duly authorized agency of the United States, there were shipped over plaintiff's lines and its connections 227 shipments of various kinds of Government property from and to the points listed in Exhibit 8 to the plaintiff's petition. All of said shipments were transported on Government bills of lading and were delivered by plaintiff in accordance therewith.

XIV

For said transportation service plaintiff submitted its bills on which it claimed freight charges totaling \$8,984.69, of which amount defendant paid plaintiff \$7,467.48, leaving [rol. 92] a balance of \$1,517.21 unpaid, as set forth in Exhibit 8 to the petition.

Plaintiff, however, has abandoned amounts claimed on shipments described in items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 22, 23, 24, 25, 27, 28, 31, 32, 33, 38, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 60, 61, 62, 63, 67, 68, 69, 70, 71, 72, 73, 74, 76, 84, 85, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 106, 107, 108, 109, 110, 111, 112, 116, 117, 119, 120, 121, 122, 129, 130, 131, 132, 138, 139, 141, 142, 143, 148, 154, 155, 156; 157, 158, 160, 161, 165, 174, 176, 180, 181, 183, 186, 189, 192, 193, 194, 207, 208, 210, 211, totalling \$474.07, and now claims a balance of \$1,043.17 to be due on the remaining shipments embraced in plaintiff's second cause of action instead of \$1,517.21 as stated in Exhibit 8 to the petition.

XV

The commercial rates applicable on shipments described in items Nos. 12, 14, 15, 20, 21, 26, 29, 30, 34, 35, 36, 37, 39, 40, 41, 46, 54, 55, 56, 57, 58, 59, 64, 65, 66, 77, 78, 79, 80, 81, 82, 83, 100, 101, 102, 103, 104, 105, 113, 114, 115, 118, 123, 124, 125, 126, 127, 128, 133, 134, 135, 136, 137, 140, 144, 145, 146, 147, 149, 150, 151, 152, 153, 159, 172, 173, 179, 182, 190, 191, 194, 195, 196, 197, 198, 204, 205, 206, 209, 212, listed in Exhibit 8 to the petition, were published in Spiden's Tariff, I. C. C. No. A-703, as amended, formerly issued by J. H. Glenn, which tariff was lawfully on file with the Interstate

[fol. 93] Commerce Commission and in effect at the time the above shipments moved.

Supplement No. 119 to Speiden's Tariff, I. C. C. No. A-703, as amended, which was in effect at the time the shipments listed in paragraph XV moved, stated on page 117 thereof, under the caption of "Routing Instructions," in section 7, that—

The rates herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in tariff, as amended, or as specifically provided in individual rate items or in connection with individual rates.

The carriers composing the routes over which the payments were computed by the defendant for the respective shipments described in items listed above were parties to said tariff as amended.

There were no prohibitions in individual rate items, or shown in connection with individual rates, or appearing elsewhere in said tariff, as amended, affecting the routing provision of Supplement No. 119 insofar as commercial shipments or the shipments described in the items referred to in this paragraph are concerned.

XVI

The commercial rates applicable on the shipments described in items Nos. 164, 168, and 169 of Exhibit 8 to the [fol. 94] petition were published in Speiden's Tariff, I. C. C. No. A-703, as amended, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect at the time the above shipments moved. All of said shipments moved from Sheffield, Alabama, to Decatur, both stations being junction points within the meaning of Alabama Routing Guide No. 222.

Item No. 692 of Supplement No. 146 to Speiden's Tariff, I. C. C. No. A-703, as amended, stated under the designation "Application of Rates, Routing Rules and Regulations Between Points in Alabama (carload, less-than-carload, or any quantity)," that—

Where there are two or more routes between any two stations over which carload freight can be moved without transfer of lading the specific carload, less-than-

carload, or any quantity rate, as the case may be published in this tariff, or as may be amended, between such points, or, in the absence of a specific rate, the lowest mileage scale rate, carload, less-than-carload, or any quantity, as the case may be, via any one of such routes will apply via all such routes, except that where specific routing is provided, in Agent Roy Pope Freight Tariff No. 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), supplements thereto or successive issues thereof, or elsewhere in this tariff, or as same may be amended, such rate will apply only via the route or routes so provided.

[fol. 95] There were no specific routes shown in Agent Speiden's Tariff, I. C. C. No. A-703, or in Alabama Routing Guide No. 222 for Alabama intrastate traffic between Sheffield, Alabama, and Decatur, Alabama. Payments made by the General Accounting Office for these shipments were computed over a land-aided route composed of the Northern Alabama Railway between Sheffield, Alabama, and Parrish, Alabama; the Southern Railway between Parrish, Alabama, and Birmingham, Alabama, and the Louisville and Nashville Railroad from Birmingham to Decatur, Alabama, over which route carload freight could have been moved without transfer of lading. Said carriers were parties to Agent Speiden's Tariff, I. C. C. No. A-703.

XVII

The shipment covered by item No. 188 of Exhibit 8 to the petition was ratable in accordance with the provisions of Supplement No. 156 to Agent F. L. Speiden's Tariff, I. C. C. No. 1281, which provided under the caption of "General Routing Instructions" that—

The rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in this tariff, as amended, or as specifically provided in individual rate items or in connection with individual rates.

[fol. 96] The carriers composing the land-aided route over which the payment for this shipment was computed were parties to Agent F. L. Speiden's Tariff, I. C. C. No. 1281, as amended, by Supplement No. 156 thereto. There was no

qualification in said tariff, as amended, which precluded the application of the General Routing Instructions in connection with the rate applied on the shipment.

XVIII

The commercial rates applicable on the shipments described in items Nos. 86, 87, and 88 were published in Agent B. T. Jones' Tariff, I. C. C. No. 2131, as amended by Supplement No. 82, which tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved.

Supplement No. 82 to the said Jones' Tariff states on the title page thereof, that—

This tariff, as amended, contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended Fourth Section of the Interstate Commerce Act are permitted by authority of Interstate Commerce Commission Fourth Section Orders Nos. 7026 of November 3, 1917, 7542 of December 2, 1919, as amended May 8, 1923, and November 2, 1925, 8574 of January 29, 1923, 8206 of June 2, 1922, 8680 of March 17, 1923, 8733 of May 25, [fol. 97] 1923, 9123 of April 21, 1925, 9585 of July 27, 1927, as amended August 13, 1927, 9578 of October 6, 1927, 9628 of September 16, 1927, and as indicated in individual items.

There is no provision of this tariff which indicates that the commercial rates from which were computed the net land-grant rates which were applied on these shipments did not apply under the authority of the Fourth Section Orders referred to on the title page of Supplement No. 82 to the tariff, via the route selected by defendant for land-grant purposes.

XIX

The commercial rates applicable on the shipments described in items Nos. 166, 167, 170, 171, 175, 177, 178, 184, 187, 199, 200, 201, 202, 203, 213, and 214 were published in Speiden's Tariff, I. C. C. No. 1829, which tariff was lawfully on file with the Interstate Commerce Commission and was in effect when the above shipments moved.

Speiden's Tariff, I. C. C. No. 1829, provided under the heading of "Routing Instructions," that—

The rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in individual rate items or in connection with individual rates.

[fol. 98] There is no limitation in this tariff which precludes the application of the commercial rates over the route selected by defendant for these shipments for land-grant purposes.

XX

The commercial rates applicable on the shipments described in items 75, 162, 163, and 185 of Exhibit 8 to the petition herein, were published in Speiden's Tariff, I. C. C. No. 1846, which tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved.

Item 2000 of Speiden's Tariff, I. C. C. 1846, provided under the caption of "Routing Instructions," that—

Rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in tariffs, as amended, or as specifically provided in individual rate items or in connection with individual rates.

There were no exceptions in the tariff which precluded application of the commercial rates over the routes selected by defendant for these shipments for land-grant purposes.

XXI

The commercial rates applicable on the shipments described in items Nos. 215 and 216 of Exhibit 8 to the petition herein, were published in Pope's Tariff, I. C. C. No. 110, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect when the above shipments moved. Each of said shipments moved from Decatur, Alabama, to Margecum, Alabama, the former being a junction point and the

latter a local point within the definitions of those terms in Alabama Routing Guide No. 222.

Item No. 615 to Pope's Tariff, Section No. 110, provides in part as follows:

Rates to Apply via Routes Not Authorized in this Tariff or in Alabama Routing Guide.

(The provisions of this item are applicable only to Alabama Intrastate traffic. Interstate routes are in nowise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on pages 240 through 249 of this tariff, in individual rate items, or in connection with individual rates.)

When specific routing is provided in this tariff or in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), and shipments move at shippers' direction via a route not authorized in this tariff or in the Routing Guide, the rate to be assessed [fol. 100] will be 110 percent of the rate applicable via the authorized route or routes between such stations (fractions to be disposed of in accordance with Rule 36 of Sou. Class'n) or the rate made by use of the appropriate mileage scale for the distance the shipment actually moves, whichever is higher, except that when such shipment moves between a local station and a common point * * * the appropriate mileage scale for the distance the shipment actually moves shall not be exceeded.

The shipments listed in this paragraph were rated for the purpose of land-grant deductions over a route other than that authorized by Alabama Routing Guide No. 222, which caused the normal rate to be increased 10 percent. The increase has been included in the charges as computed by defendant to be payable under the equalization agreement and as shown in defendant's Exhibit E.

XXII

The commercial rates applicable on the shipments described in items Nos. 217, 218, 219, 226, and 227 of Exhibit 8 to the petition herein, published in Pope's Tariff,

I. C. C. No. 110, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect when the above shipments moved. The shipments moved between Sheffield, Alabama, and Decatur, Alabama, both places being junction points within the definition of that term published in Alabama Routing Guide No. 222.

[fol. 101] Item No. 612 of Pope's Tariff, I. C. C. 110, provides that—

Routing Rules and Regulations, Between Points in Alabama (Carload, Less-than-Carload, or Any Quantity)

(The provisions of this item are applicable only to Alabama intrastate traffic. Interstate routes are in nowise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 240 through 241 of this tariff, in individual rate items, or in connection with individual rates.)

Where there are two or more routes between any two stations over which carload freight can be moved without transfer of lading, the specific carload, less-than-carload, or any quantity rate, as the case may be, published in this tariff between such points, or, in the absence of a specific rate, the lowest mileage-scale rate, carload, less-than-carload, or any quantity, as the case may be, via any one of such routes will apply via all such routes, except that where specific routing is provided in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), or elsewhere in this tariff, such rate will apply only via the route or routes so provided.

No specific routing is published in Alabama Routing Guide No. 222, nor in Pope's Tariff, I. C. C. No. 110, [fol. 102] between Sheffield, Alabama, and Decatur, Alabama. The route selected by defendant for land-grant purposes for the shipments listed in this paragraph did not require the lading of a carload shipment to be transferred. The carriers composing the land-aided route over which were computed the payments made by defendant were parties to Pope's Tariff, I. C. C. No. 110.

XXIII

The commercial rates applicable on the shipments described in items Nos. 220, 221, 222, 223, 224, of Exhibit 8 to the petition herein, were published in Pope's Tariff, I. C. C. No. 197, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect when the above shipments moved. The shipments moved from Decatur, Alabama, to Sheffield, Alabama, both places being junction points within the definition of that term as published in Alabama Routing Guide No. 222.

Item No. 11015 of Pope's Tariff, aforesaid, provides, that—

Routing Between Points in Alabama (Carload or Less-than-Carload)

The provisions of this item are applicable only on Alabama Intrastate Traffic and then only between stations [fol. 163] served by the following lines. Interstate routes are in nowise affected by the provisions of this item, rates in this tariff, apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 32 through 85 of tariff, or in individual rate items, or in connection with individual rates.

AGS	CofC	NC&StL	SAL
AB&C	IC	NA	Sou
BS ***	L&N	SLSF	WofA

M&O

Where there are two or more routes between any two stations over which carload freight can be moved without transfer of lading, the specific carload or less-than-carload rate as the case may be, published in this tariff, or as same may be amended, between such points or in the absence of a specific rate, the lowest mileage-scale rate, whether carload or less than carload, as the case may be, via any one of such routes will apply via all such routes, except that where routing is provided in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496, such rate will apply via the route or routes so provided.

No specific routing is published between Decatur and Sheffield, in Alabama Routing Guide 222, nor in Tariff No. 197. The routes selected by defendant for land-grant purposes for the shipments listed in this paragraph did not require the lading of a carload shipment to be trans-[fol. 104] ferred. The carriers composing the land-aided route over which were computed the payments made by defendant were parties to Tariff, I. C. C. No. 197.

XXIV

The shipment described in item No. 225 consisted of steel piling and a power shovel weighing 131,000 pounds and 102,400 pounds, respectively, which moved from Margerum, Alabama, to Decatur, Alabama. Margerum is a local point and Decatur, a junction point, within the definition of those terms as published in Alabama Routing Guide No. 222.

The rate which was applicable on the steel piling was published in Agent Roy Pope's Tariff, I. C. C. No. 197, which provided in item No. 11018 thereof that—

**Rates to Apply via Routes Not Authorized Herein or
in Roy Pope Tariff 222 (Alabama Routing Guide),
I. C. C. 1496 (C. R. Young Series)**

The provisions of this item are applicable only on Alabama Intrastate Traffic and then only between stations served by the following lines. Interstate routes are in no wise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 32 through 85 of tariff, or in individual rate [fol. 105] items, or in connection with individual rates.

AGS	CofGa	NC&STL	
AB&C	IC	NA	SAL
BS * * *	L&N	SLSF	Sou
		M&O	WofA

When routing is provided herein, or in Roy Pope Freight Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series) and shipments move at shipper's direction via a route not authorized herein, or in the Routing Guide, the rate to be assessed will be 110 percent of the rate applicable via the author-

ized route or routes between such stations (fractions to be disposed of in accordance with Rule 36 of Sou. Class'n), or the rate made by use of the appropriate mileage scale for the distance the shipment actually moves, whichever is higher, except that when such shipment moves between a local station and a common point the appropriate mileage scale for the distance the shipment actually moves shall not be exceeded

The rate which was applicable on power shovels was published in Agent Roy Pope's Tariff, I. C. C. No. 110, which provided in item No. 615 thereof, in pertinent part, that—

Rates to Apply via Routes Not Authorized in This Tariff or in Alabama Routing Guide

(The provisions of this item are applicable only to Alabama intrastate traffic. Interstate routes are in [fol. 106] nowise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 240 through 249 of this tariff, in individual rate items, or in connection with individual rates.)

When specific routing is provided in this tariff or in Roy Pope's Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), and shipments move at shippers' direction via a route not authorized in this tariff or in the Routing Guide, the rate to be assessed will be 110 per cent of the rate applicable via the authorized route or routes between such stations (fractions to be disposed of in accordance with Rule 36 of Sou. Class'n) or the rate made by use of the appropriate mileage scale for the distance the shipment actually moves, whichever is higher, except that when such shipment moves between a local station and a common point . . . the appropriate mileage scale for the distance the shipment actually moves shall not be exceeded.

The shipment herein involved was rated by defendant for the purpose of land-grant deductions over a route other than that authorized in Alabama Routing Guide No. 222.

Therefore, the normal commercial rates published in these tariffs are each subject to an increase of 10 percent when applied over the land-aided route selected by defendant. The increase has been included in the charges as computed [fol. 107] by defendant to be payable under the equalization agreement and as shown in Defendant's Exhibit E.

XXV

The rates published in the tariffs specifically mentioned in the foregoing paragraphs (XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV and XXVI) of this cause of action were applicable on commercial shipments, similar to the Government shipments described in Exhibit No. 8 to the petition herein, which might have been forwarded via routes used by the defendant as bases for computing the several amounts payable to plaintiff for the shipments described in said Exhibit No. 8.

The several amounts computed by the defendant as properly payable to the plaintiff for the shipments described in said Exhibit No. 8 were determined on the basis of net rates available as derived through deductions account of land-grant distance from commercial rates lawfully on file with the Interstate Commerce Commission applying from the respective points of origin to the respective destinations listed in said Exhibit No. 8 at the time of movement of said shipments.

The applications of the commercial rates published in the tariffs specifically mentioned in the foregoing paragraphs, were not subject to any mileage limitations insofar [fol. 108] as the shipments involved in the second clause of action were concerned. Said commercial rates, in addition to applying over the routes used by the plaintiff as a basis for charges claimed and by defendant as a basis for determining the several amounts claimed to be payable, applied also from the respective points of origin to the respective destinations, listed in Exhibit 8 to the petition, via other routes via which deductions for land-grant mileage occurring in such other routes would result in charges lower than those claimed by plaintiff but higher than the amounts paid by defendant.

There is no controversy respecting the amount of the commercial rates used by the plaintiff and the defendant, nor is there any dispute as to the fact that the net amounts

indicated by the defendant as properly payable have been computed correctly over the land-aided routes used by the defendant as a basis for such payments. The sole issue is the selection of an available land-aided route, if any, in accordance with the terms of the plaintiff's Freight Land-Grant Equalization Agreement, for the purpose of establishing charges for transporting the shipments, listed in said Exhibit 8, over the actual routes of movement.

Photostatic copies of the pertinent provisions of the tariffs specifically mentioned in the foregoing paragraphs of this cause of action, marked Defendant's Exhibit F, are [fol. 109] attached hereto and made a part hereof by reference.

XXVI

Based upon defendant's disbursing and accounting officers' interpretation of the routing provisions of the several tariffs cited herein and the equalization agreement, a net amount of \$41.91 is due plaintiff for the shipments covered by the second cause of action.

A tabulation showing the amount due defendant on shipments described in item No. 95, and the amounts due plaintiff on shipments described in items Nos. 215, 216, and 225 of Exhibit 8 to the petition, marked Exhibit E, is attached hereto and made a part hereof by reference.

Third Cause of Action

XXVII

On November 29, 1933, plaintiff and defendant entered into an agreement entitled "Freight Land-Grant Equalization Agreement," a copy of which, marked Plaintiff's Exhibit No. I, is attached hereto and made a part hereof. Under said agreement plaintiff agreed to accept, and defendant agreed to pay, subject to the condition and exception hereinafter mentioned, for the transportation of property of the United States for which the United States is [fol. 110] lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission, applying from origin to destination at the time of movement. Said agreement was in full force and effect at all times hereinafter mentioned.

The condition and exception to said agreement above mentioned read as follows:

2. Conditions.

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with the Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

3. Exceptions.

(b) On traffic moving from or to points in Central and Illinois Freight Association territories the provisions of Conditions (a) * * * in paragraph 2 above are hereby waived, provided the traffic moves in connection with these carriers via Cincinnati, Ohio, Louisville, Ky., East St. Louis, Ill., or other junction points on St. Louis Division of Southern Railway Company.

[fol. 111]

XXVIII

Between December 29, 1934, and June 12, 1936, duly authorized representatives of defendant shipped over plaintiff's lines of railway and those of its connections 35 shipments of various kinds of Government property from and to points listed in Exhibit 9 to plaintiff's petition. All of said shipments were transported on Government bills of lading and were delivered by plaintiff in accordance therewith.

For said transportation services plaintiff submitted its bills on which it claimed freight charges totaling \$2,524.00, of which amount defendant paid plaintiff \$2,110.83, leaving a balance of \$413.17 unpaid, as set forth in Exhibit 9 to the petition. Plaintiff abandoned the balances claimed on all of said shipments except the balances totaling \$324.77 claimed on items Nos. 5, 21, 22, and 24 in said Exhibit 9.

The shipments described in items Nos. 5 and 24 of Exhibit 9 to the petition herein originated in Central Freight Association Territory and moved via Norfolk, Virginia, in connection with the Pennsylvania Railroad Company, which did not have on file with the Quartermaster General, United

States Army, a freight land-grant equalization agreement for its lines east of Pittsburgh, Oil City, and Erie, Pennsylvania. The commercial rates applicable on said shipments were published in Pope's Tariff, I. C. C. No. 2849, which [fol. 112] tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved.

The commercial rates applicable on the shipments described in items 21 and 22 of said Exhibit 9 were published in Pope's Tariff, I. C. C. No. 1449, which tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved. Under the provisions of said tariff the commercial rates published therein were not applicable via the land-aided routes over which the charges for said shipments were computed by defendant.

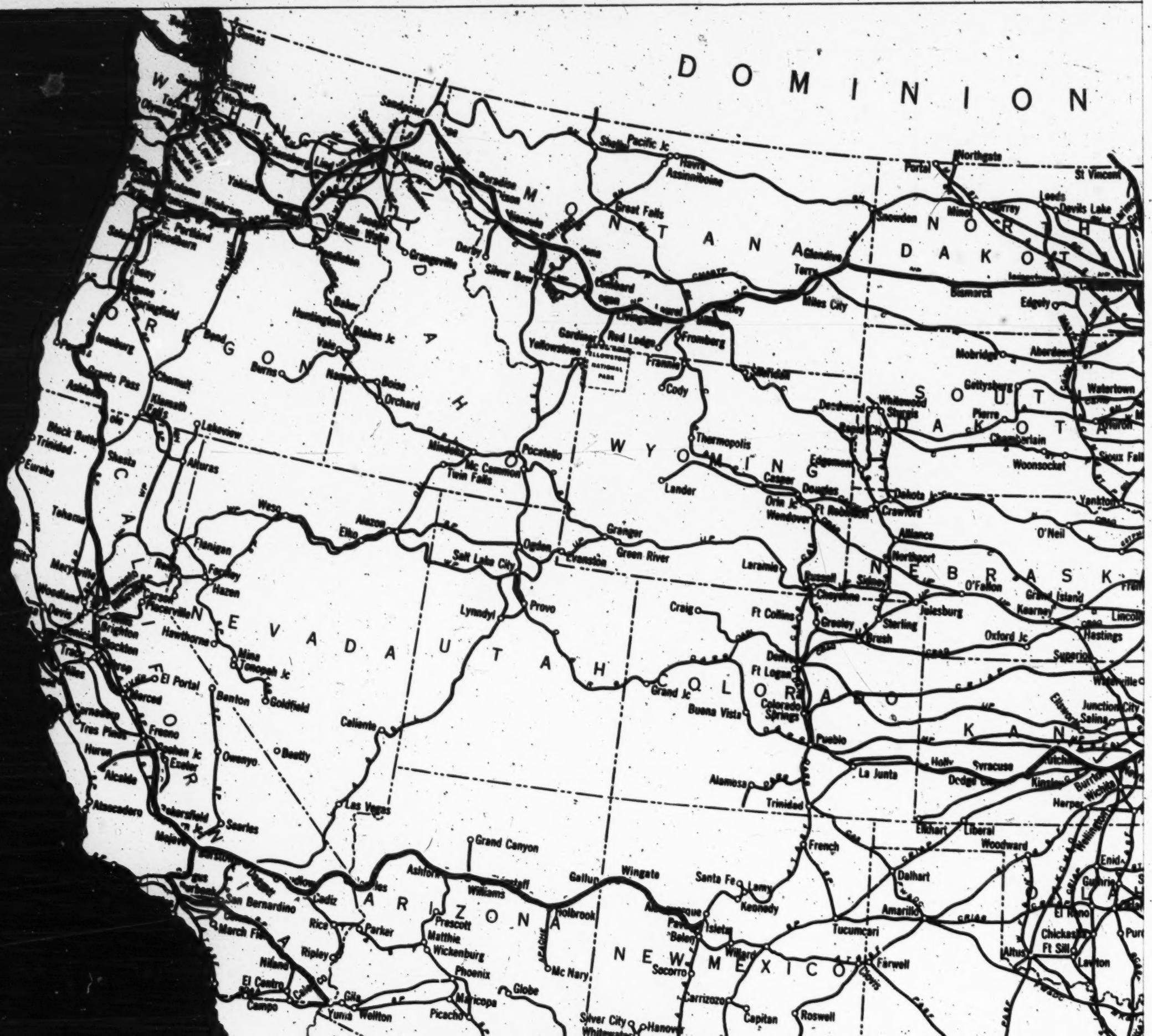
XXIX

Defendant concedes that plaintiff is entitled to recover the principal amount of \$324.77 claimed on its third cause of action. If the Court should find that in the first and second causes of action defendant has not computed the charges in accordance with the tariffs and land-grant equalization agreement hereinbefore cited, and that said tariffs and agreement are silent on the matter of distance limitations, then there is no fixed basis upon which plaintiff and defendant can agree for the computation of net charges in the absence of a determination by the Court of such mileage limitations as it may find to be proper within the contemplation of said tariffs and land-grant equalization agreement; [fol. 113] but when said limitations, if any, are determined by the Court, charges in accordance therewith will be computed by the parties, and if in agreement, will be for stipulation as to the amount due the plaintiff or the defendant, as the case may be.

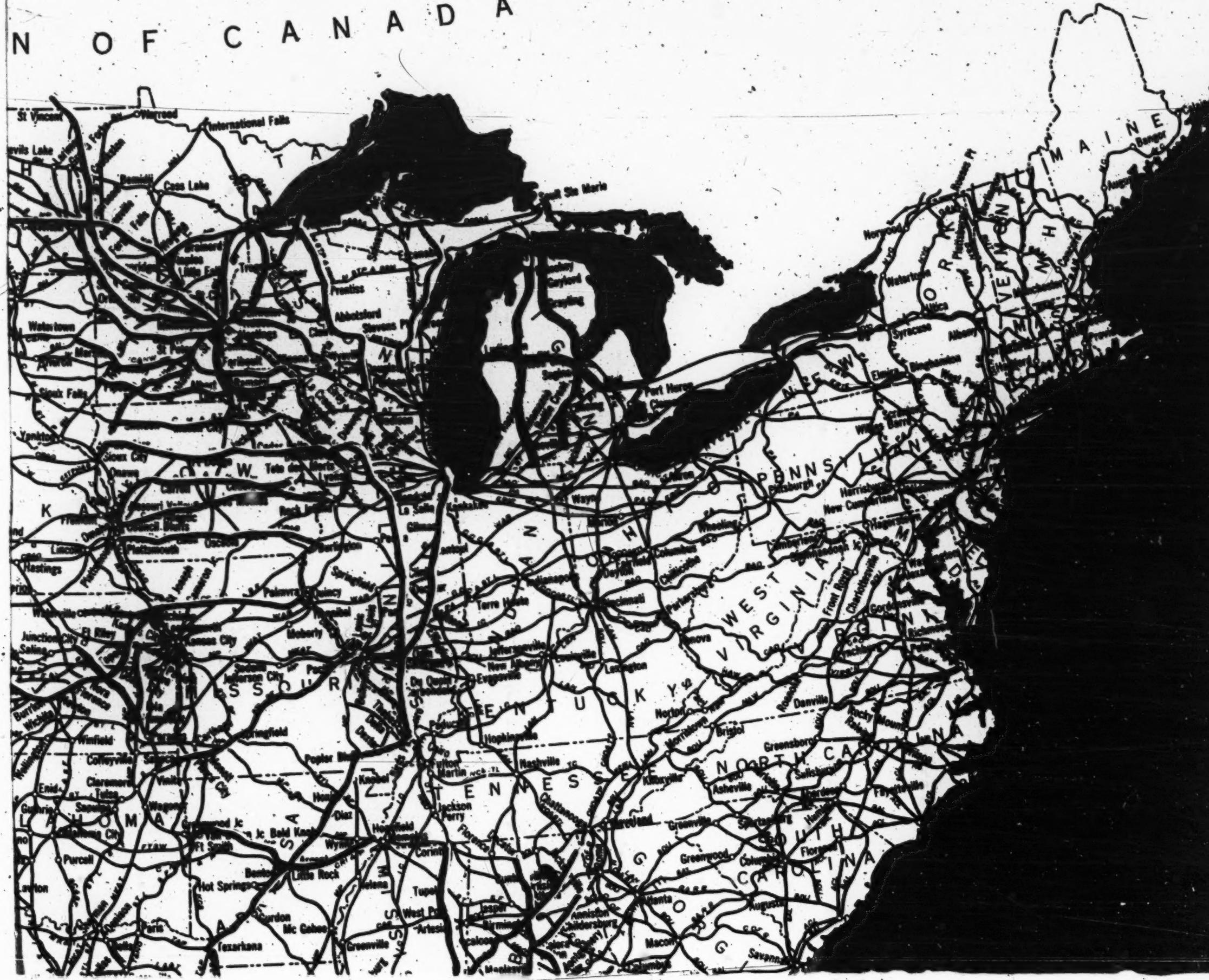
Francis M. Shea, Assistant Attorney General. Louis R. Mehlinger, Attorney for Defendant. Seddon G. Boxley, Attorney for Plaintiff.

(Here follows 1 photolithograph, side folio 114)

DOMINION



N O F C A N A D A



[fol. 115] PLAINTIFF'S EXHIBIT No. 1 TO AGREED STATEMENT
OF FACTS

Southern Railway System
Office of Vice President
In Charge of Traffic
Washington, D. C.

E. R. Oliver, Vice-President.

November 29, 1933. c 32937.

Freight Land-Grant Equalization Agreement

The Quartermaster General, War Department, Washington, D. C.

SIR:

1. The following carriers:

Southern Railway Company,
The Alabama Great Southern Railroad Company,
The Cincinnati, New Orleans & Texas Pacific Railway
Company,
Georgia, Southern & Florida Railway Company,
New Orleans & Northeastern Railroad Company,
Northern Alabama Railway Company,

hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduce rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on

file with the Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

(b) On traffic destined to and/or received from points on lines of other carriers this agreement is subject also to the exceptions in agreements of each individual carrier forming part of the through route of movement, on file with the Quartermaster General, War Department, Washington, D. C., except as may be otherwise provided under the heading of Exceptions in paragraph 3 below.

[fol. 116] 3. Exceptions—

(a) On traffic moving from or to points in Trunk Line and New England Freight Association territories the provisions of Conditions (a) and (b) in paragraph 2 above are hereby waived, provided the traffic moves in connection with these carriers via Potomac Yard, Pinners Point or Strasburg Junction, Va.

(b) On traffic moving from or to points in Central and Illinois Freight Association territories the provisions of Conditions (a) and (b) in paragraph 2 above are hereby waived, provided the traffic moves in connection with these carriers via Cincinnati, Ohio, Louisville, Ky., East St. Louis, Ill., or other junction points, on St. Louis Division of Southern Railway Company.

(c) Handling of shipments in services such as car ferry, floatage, lighterage, and/or switching, by carriers that have not filed with The Quartermaster General, War Department, Washington, D. C., an agreement of the form stated in paragraph 1 above will not in any way affect this agreement. On such shipments the agreement carriers forming a part of the through route of movement will protect applicable land-grant deductions just the same as if the car ferry, floatage, lighterage, and/or switching line had an agreement on file with The Quartermaster General, War Department, Washington, D. C.

(d) On traffic moving via all-rail routes these carriers will not equalize net rates which are established via rail and water routes. (Note: The use of lighterage

and/or floatage and/or car ferry service only shall not be construed as rail and water carriage and rate, if and when an otherwise rail rate is employed.)

(e) On traffic moving via rail and water routes these carriers will not equalize net rates which are established via all-rail routes.

(f) These carriers will not equalize net land grant rates, except on United States Government property shipped on Government bills of lading, the transportation charges on which are paid to the carrier by and borne by the United States Government.

(g) This agreement does not apply to any traffic handled for account of: The District of Columbia.

[fols. 117-118] (h) The Southern Railway Company on its line in Indiana and Illinois will not equalize net land-grant rates except on traffic originating at or destined to points in Southern Freight Association territory.

4. This agreement becomes effective December 1, 1933 and remains in effect until January 1, 1935, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted, Southern Railway Company,
The Alabama Great Southern Railroad Company,
The Cincinnati, New Orleans & Texas Pacific Railway Company,
Georgia Southern & Florida Railway Company,
New Orleans & Northeastern Railroad Company,
Northern Alabama Railway Company, E. R. Oliver, Vice-President.

Accepted for The Quartermaster General: By R. E. Shannon, Capt.; Q. M. C., Ass't.

Date: December 5, 1933.

(Here follows 1 photolithograph, side folio 119)

[fol. 120] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTED RECORD

It is stipulated and agreed by and between the parties hereto that documents marked "Plaintiff's Exhibit No. 40," "Plaintiff's Exhibit No. 42," "Plaintiff's Exhibit No. 44" and "Plaintiff's Exhibit No. 46," in the transcript of the record certified herein by the Assistant Clerk, Court of Claims of the United States, may be omitted from the printed record herein, said documents being further identified by page number of the certified transcript as follows: Plaintiff's Exhibit No. 40—pages 120, 121; Plaintiff's Exhibit No. 42—page 122; Plaintiff's Exhibit No. 44—page 123; and Plaintiff's Exhibit No. 46—page 124.

It is expressly understood and agreed that either party hereto may refer to any part of the record not printed, in brief or argument, to the same extent as if the same were made a part of the printed record.

Seddon G. Boxley, Counsel for Petitioner. Charles Fahy, Solicitor General of the United States, —————, Attorney, Counsel for Respondent.

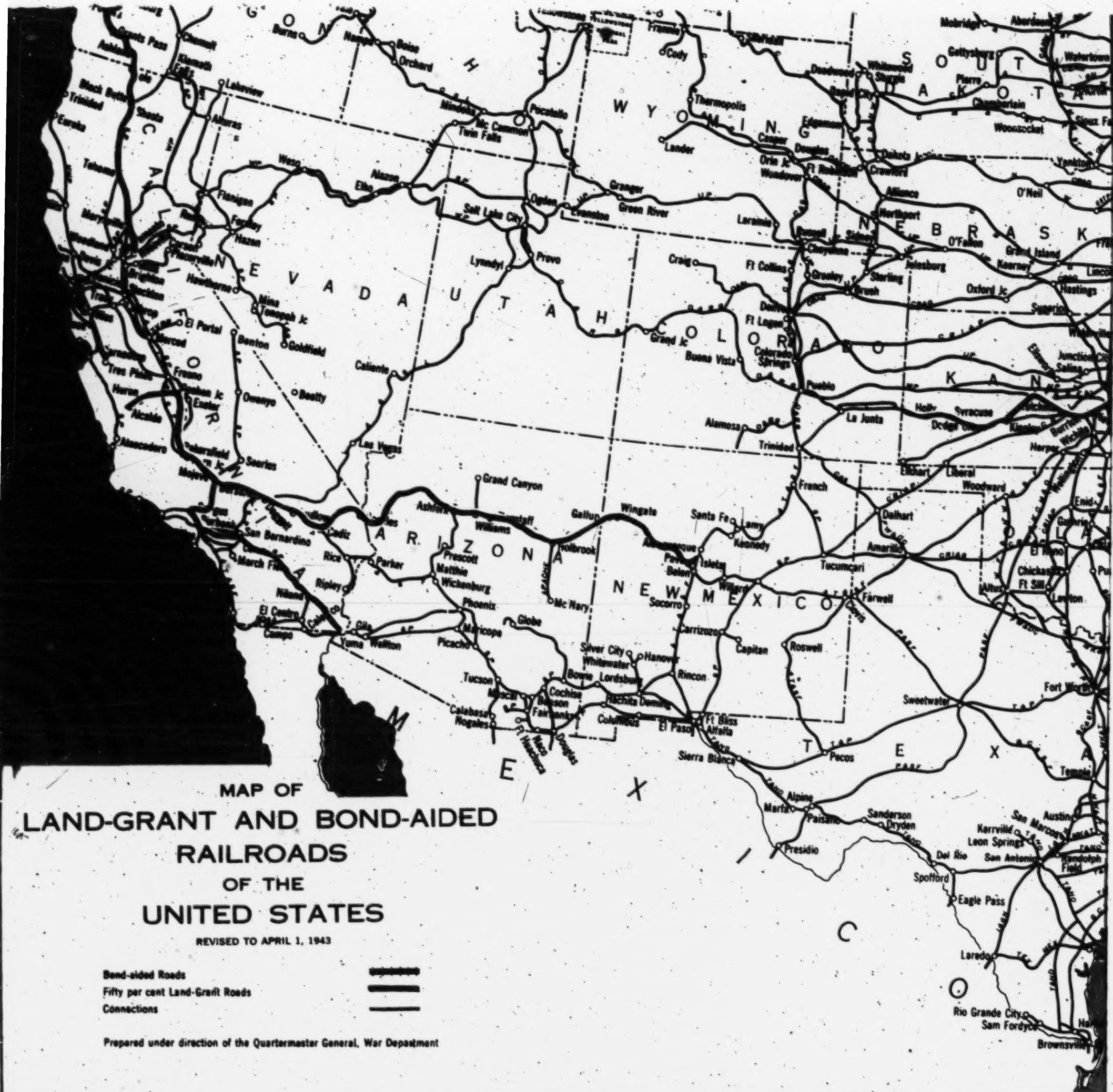
Endorsed on Cover: File No. 48,071. Court of Claims. Term No. 578. Southern Railway Company, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed January 4, 1944. Term No. 578, O. T. 1943.

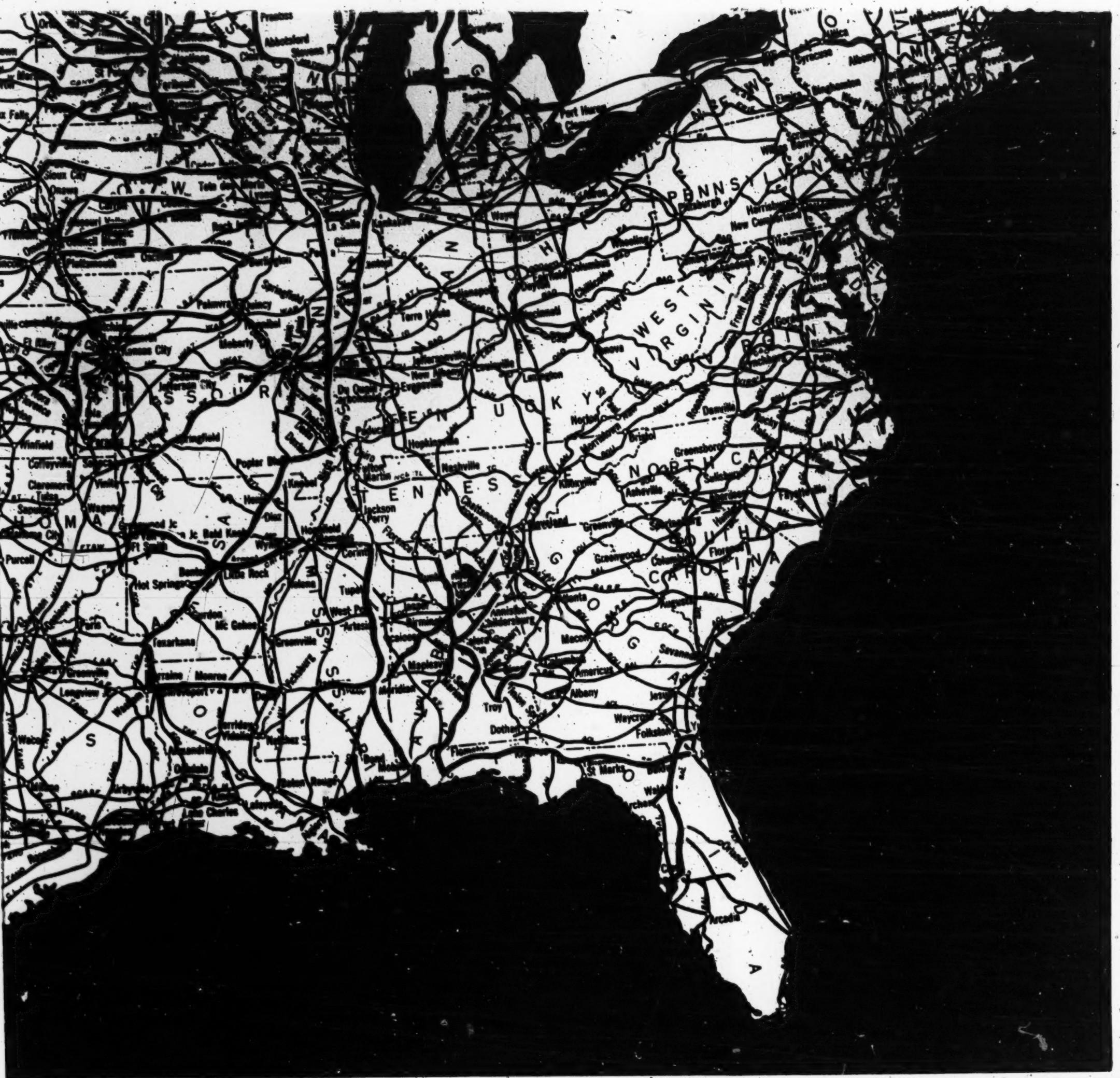
[fol. 121] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 6, 1944

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is transferred to the summary docket.

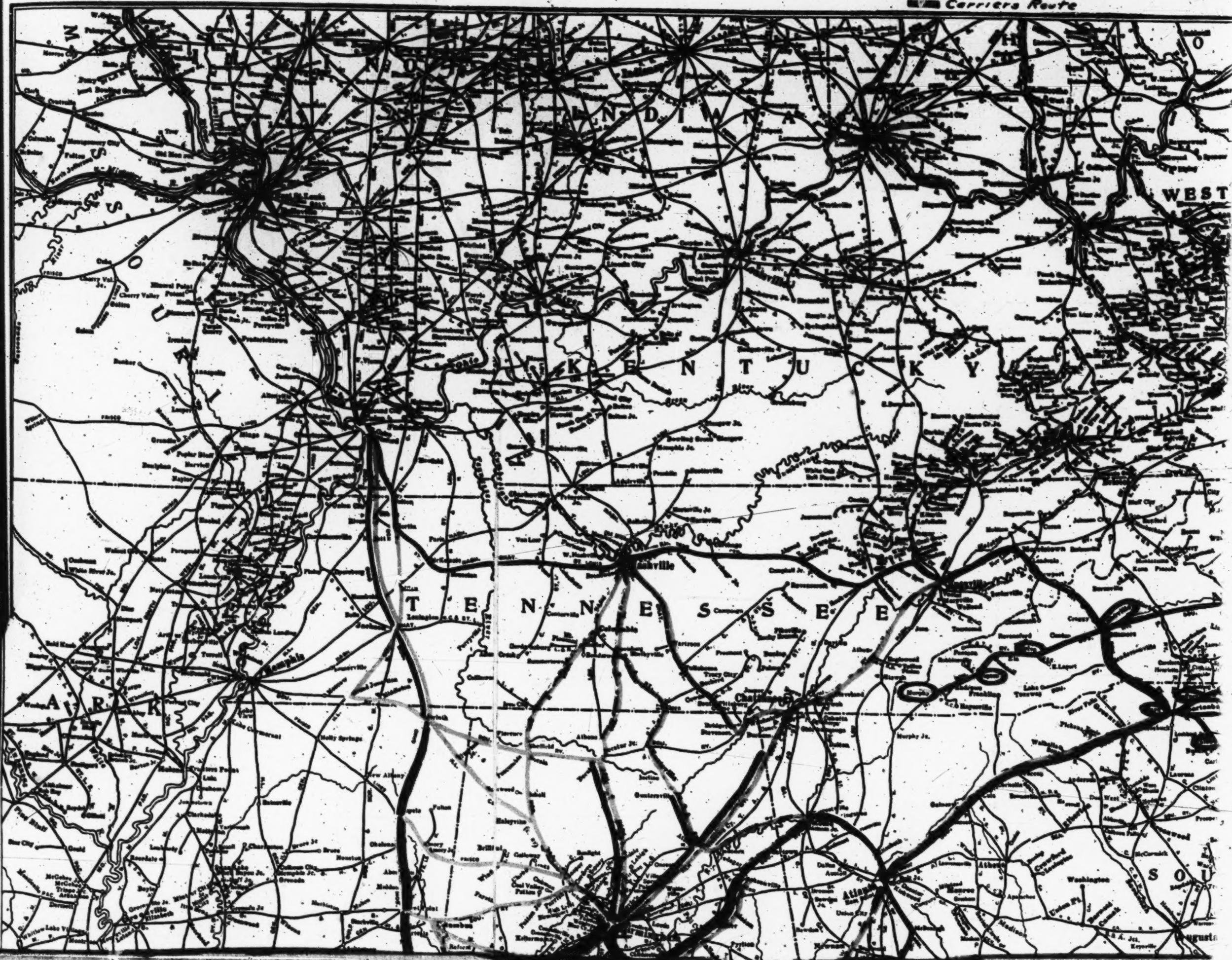
And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.





Land Grant
Government Route
Interstate Route
Carriers Route

PLAINTIFF



PLAINTIFF'S EXHIBIT NO. 26 (Referred to in Court's Findings)

